

Arbitrator Fallas Excerpts



ARBITRATION PROCEEDINGS - DAY 2 - October 13, 2010
ARISPE, ET AL VS. MORGAN KEEGAN, & COMPANY

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<p>1 BEFORE FINRA DISPUTE RESOLUTION</p> <p>2 In the Matter of the Arbitration Between:</p> <p>3 RICHARD R. ARISPE, JIMMY A.) BURKE, PEGGY E. BURKE, TODD) 4 B. BURKE, JOSE J. COLLADO,) ADELA CHRISTINE COLLADO,) 5 CHARLES K. COLVIN, C & C) ERECTION, INC., NANCY GORDON,) 6 SUSAN W. HACKNEY, DON H.) JONES, SUZANN S. JONES,) 7 WILLIAM A. RHODES, JR., DAWN) SCHUESSLER, KENNETH W. SEARS,) 8 KENNETH W. SEARS, JR., REINE) M. SEARS, DANIEL J. SEARS,) 9 KENNETH W. SEARS, III, JUDY) STRICKLAND, ELIZABETH STEIN &) 10 SHANA L. STEIN,) Claimants) 11 v.) FINRA CASE NO. 09-006655) 12 MORGAN KEEGAN & COMPANY,) Respondent.) 13</p> <p>14 DAY 2</p> <p>15 ARBITRATION PROCEEDINGS</p> <p>16 October 13, 2010</p> <p>17 ARBITRATION PROCEEDINGS was taken in the</p> <p>18 above-styled and numbered cause on the 13th day of</p> <p>19 October, 2010, from 8:58 a.m. to 5:36 p.m., before Kelly</p> <p>20 Hanna, Certified Shorthand Reporter in and for the State</p> <p>21 of Texas, reported by computerized stenotype machine at</p> <p>22 the offices of Greenberg Traurig, 1000 Louisiana, Suite</p> <p>23 1700, Houston, Texas, pursuant to the Federal Rules of</p> <p>24 Civil Procedure and the provisions stated on the record</p> <p>25 or attached hereto.</p>	<p>1 INDEX</p> <p>2 PAGE</p> <p>3 Examination Continued by Mr. Carlin249</p> <p>Examination by Mr. Dobrowski294</p> <p>4 Cross-Examination by Mr. Weiss399</p> <p>ReDirect Examination by Mr. Dobrowski492</p> <p>5 ReCross-Examination by Mr. Weiss499</p> <p>Further ReDirect Examination by Mr. Dobrowski ...511</p> <p>6 Further ReCross-Examination by Mr. Weiss513</p> <p>Further ReCross-Examination by Mr. Weiss520</p> <p>7 Court Reporter's Certificate532</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR CLAIMANTS:</p> <p>4 Mr. Paul J. Dobrowski</p> <p>Mr. Bruce Kemp</p> <p>5 Mr. Cody Stafford</p> <p>Dobrowski, LLP</p> <p>6 4601 Washington Avenue, Suite 300</p> <p>Houston, Texas 77007</p> <p>7 Telephone: 713.659.2900</p> <p>Fax: 713.659.2908</p> <p>8 E-mail: pjd@doblaw.com</p> <p>9 FOR RESPONDENTS:</p> <p>10 Mr. Terry Weiss</p> <p>Mr. Steve Carlin</p> <p>11 Ms. Jennifer Tomsen</p> <p>Ms. Penelope Brobst Blackwell</p> <p>12 Greenberg Traurig</p> <p>The Forum</p> <p>13 3290 Northside Parkway, Suite 400</p> <p>Atlanta, Georgia 30327</p> <p>14 Telephone: 878.553.2100</p> <p>Fax: 678.553.2212</p> <p>15 E-mail: weissstr@gflaw.com</p> <p>16 ALSO PRESENT:</p> <p>17 Mr. Maurice Fallas, Arbitrator</p> <p>Mr. Raymond C. Kerr, Arbitrator</p> <p>18 Mr. Thomas A. Martin, Arbitrator</p> <p>Mr. Tom Barnett, Morgan Keegan</p> <p>19 Mr. Don Jones, Claimant</p> <p>Ms. Susan Hackney, Claimant</p> <p>20 Mr. Steve Scales, Expert</p> <p>Mr. Kjell Ekdahl, Expert</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 MR. KERR: All right. Good morning,</p> <p>2 everybody. This is the second day of hearing in the</p> <p>3 Arispe, et al. versus Morgan Keegan & Company. There</p> <p>4 are some housekeeping issues, I understand. So,</p> <p>5 Ms. Blackwell.</p> <p>6 MS. BLACKWELL: One brief issue,</p> <p>7 Mr. Chairperson. We -- this case, as you know, was</p> <p>8 originally consolidated into one case and then severed,</p> <p>9 and when we severed it -- before we severed it, we had</p> <p>10 entered into a confidentiality agreement to cover all</p> <p>11 the documents produced by the parties to the extent they</p> <p>12 were marked confidential. The parties have agreed that</p> <p>13 that confidentiality agreement will apply in this case</p> <p>14 because most of the documents used in this case were</p> <p>15 actually produced in that other case. So, we just want</p> <p>16 on the record that this agreement applies in this case,</p> <p>17 assuming that the Panel is agreeable.</p> <p>18 MR. KERR: Certainly, we're agreeable.</p> <p>19 This several-page confidentiality agreement does apply,</p> <p>20 and do you want to make it an exhibit?</p> <p>21 MS. BLACKWELL: Yes, we probably should</p> <p>22 make it an exhibit.</p> <p>23 MR. CARLIN: It would be our 194.</p> <p>24 MR. DOBROWSKI: Arbitrator's 2.</p> <p>25 MS. BLACKWELL: Yeah, Arbitrator's 2.</p>

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Page 337	<p>1 Slide 14 represents, because we're going to try and move</p> <p>2 a little quicker?</p> <p>3 A. Sure. Slides 14 through 18 are related. On</p> <p>4 Slide 14, I've reported as of March 31st, 2007, what</p> <p>5 fraction of the portfolio is in asset-backed securities</p> <p>6 or structured finance, I'll use those terms</p> <p>7 interchangeably, and what percentage is in corporate</p> <p>8 bonds. And, so, if we just go down through the numbers,</p> <p>9 for RHY, which is the Multi Sector High Income Fund,</p> <p>10 it's 70 percent in structured finance, 21 percent in</p> <p>11 corporate bonds. For the High Income Fund, RMH, it's</p> <p>12 65 percent in structured finance, 24 percent in</p> <p>13 corporate bonds. Strategic Income, it's 65 percent in</p> <p>14 structured finance, 22 percent in corporate bonds. And</p> <p>15 for Advantage Income fund, 66 in structured finance, 22</p> <p>16 in corporate bonds. So, three times as much structured</p> <p>17 finance as corporate bonds.</p> <p>18 Q. And those are the four closed-end funds, right,</p> <p>19 sir?</p> <p>20 A. Yes.</p> <p>21 Q. And then what are Slides 15 through 18?</p> <p>22 A. Well, I've plotted over time the same two</p> <p>23 items, the percent invested in structured finance, the</p> <p>24 percent invested in corporate bonds. The percent</p> <p>25 invested in structured finance is in blue, the percent</p>	Page 339	<p>1 MR. KERR: Go ahead.</p> <p>2 MR. FALLAS: On Slide 10 -- not Slide</p> <p>3 10 -- Slide 12, that blue line, that top blue line</p> <p>4 that's the non-RMK Funds?</p> <p>5 THE WITNESS: Yes.</p> <p>6 MR. FALLAS: You said it's the other high</p> <p>7 yield bond funds that don't include the RMK.</p> <p>8 THE WITNESS: Correct.</p> <p>9 MR. FALLAS: And there's 35 of them.</p> <p>10 THE WITNESS: Yes.</p> <p>11 MR. FALLAS: Which 35 -- you're saying all</p> <p>12 35 of everything else that there was at that time?</p> <p>13 THE WITNESS: That's correct.</p> <p>14 MR. DOBROWSKI: Closed-end.</p> <p>15 THE WITNESS: Closed-end.</p> <p>16 MR. DOBROWSKI: Let's be clear.</p> <p>17 THE WITNESS: Yeah. I'm comparing it to</p> <p>18 closed-end high yield funds. So, it's not open-end</p> <p>19 funds. Open-end funds that don't use leverage and have</p> <p>20 other slight differences, there are hundreds of them,</p> <p>21 but closed-end high yield funds, there are 35 of them</p> <p>22 with data throughout this period, and I've got them</p> <p>23 described in a little bit more fully in a footnote, I</p> <p>24 think, to the paper that's in Tab 3, behind Tab 3, but</p> <p>25 there are 35 funds. Sounds like a small number, but if</p>
Page 338	<p>1 invested in corporate bonds in red and I have plotted</p> <p>2 them from inception to the summer of 2008. And the only</p> <p>3 thing -- two things I would ask you to note when you</p> <p>4 look at them, the structured finance is consistently 60</p> <p>5 to 80 percent of the portfolio. The corporate bonds,</p> <p>6 consistently 10 to 25 percent of the portfolio, except</p> <p>7 when you get to late 2007 you see the gap between those</p> <p>8 two lines, the blue line and the red line narrowing.</p> <p>9 The reason it's narrowing is not because the portfolio</p> <p>10 is being repositioned, but these are percent of market</p> <p>11 value. So, if you start out with a portfolio that's</p> <p>12 70 percent in structured finance and 20 percent in</p> <p>13 corporate bonds and the structured finance loses roughly</p> <p>14 5/7 of its value, drops in market value from what would</p> <p>15 be 75 to 20, then you've got a portfolio that looks like</p> <p>16 it's half structured finance, half corporate bonds and</p> <p>17 that's essentially what's happening here towards the</p> <p>18 end. It's not that structured finance securities are</p> <p>19 being sold and corporate bonds are being bought, it's</p> <p>20 just that the market value of the structured finance</p> <p>21 securities are plummeting to zero, as I'll show you.</p> <p>22 And, so, the gap between these two lines narrow at the</p> <p>23 end.</p> <p>24 MR. FALLAS: Excuse me. I have a</p> <p>25 question.</p>	Page 340	<p>1 you actually go to the New York Stock Exchange or the</p> <p>2 AMX where these things are listed, you can actually</p> <p>3 verify that that's all there is. I thought it was too</p> <p>4 small a number when we first developed it, but that was</p> <p>5 all that was identified in combination between Bloomberg</p> <p>6 and Morningstar and so we went to the exchanges and</p> <p>7 checked it and that's the right number, 35.</p> <p>8 MR. FALLAS: So, you're saying that's all</p> <p>9 35 that were identified as high yield closed-end.</p> <p>10 THE WITNESS: Correct.</p> <p>11 MR. FALLAS: Are the 35 listed anywhere?</p> <p>12 THE WITNESS: I'm not sure. We have at</p> <p>13 one point listed them in discovery. I'm not sure in</p> <p>14 this case or not. I can provide you at the end of the</p> <p>15 day a list of the tickers and the names, if you would</p> <p>16 like, but there's 35 of them; and there's a footnote, I</p> <p>17 think, that describes them a little bit more fully --</p> <p>18 let me just identify that for you. The discussion is on</p> <p>19 Page 4 and 5 and 6. I don't see a footnote describing</p> <p>20 the Funds precisely. Let me maybe at lunch get you a</p> <p>21 list of the 35 funds, but there are 35 closed-end high</p> <p>22 yield bond funds. That's all there is.</p> <p>23 Q. (BY MR. DOBROWSKI) And when you're talking</p> <p>24 about the discussion on Pages 4, 5 and 6, you're</p> <p>25 referring to Tab 3.</p>

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<p align="right">Page 365</p> <p>1 Kodiak, and I'll get to the one slide that I do want to 2 talk to you about. So, Slide 41 is the capital 3 structure; and you see that the funds invested in the 4 bottom two tranches, the one that is labeled E and 5 labeled in the -- described in the prospectus with the 6 label subordinated.</p> <p>7 If you flip to Slide 42, 42 shows that the 8 Funds lost all of their investment in the E tranche by 9 the end of 2007, again, with no default. And if you --</p> <p>10 MR. FALLAS: Excuse me. When you say "no 11 default," you just explained pretty much what that is, 12 but those lower tranches, once they've basically -- the 13 value has gone to zero, is it -- are they technically 14 still in existence?</p> <p>15 THE WITNESS: They are.</p> <p>16 MR. FALLAS: And they continue to be in 17 existence. They don't get wiped out. I mean, they 18 don't get eliminated.</p> <p>19 THE WITNESS: In some securities -- in 20 some trusts they do. There's two ways they're dealt 21 with. One is, as the underlying trust assets are being 22 sold at realized losses, maybe repossessed homes or 23 aircrafts or there are realized losses in the underlying 24 assets, the face value of the bottom tranches start 25 being written down to zero. In -- in other cases, the</p>	<p align="right">Page 367</p> <p>1 or 3 percent you're going to receive over the next 2 couple of months, even though it is still receiving this 3 month all of its promised principal and interest, you 4 can see that that cash is going to dry up in the next 5 quarter. Then when the cash flow does stop coming, it's 6 being deferred and accumulated as additional face value 7 in the notes, even though the cash flow has stopped 8 going to the tranches above, also. These tranches are 9 never going to receive cash flow. They're worth zero. 10 The tranches above them are seeing their cash flow stop 11 and yet they're still being reported with a face value 12 that's not only constant but increasing.</p> <p>13 Q. (BY MR. DOBROWSKI) You mentioned the trustees' 14 reports indicating on a monthly basis what the cash flow 15 is like. Are those often referred to as remittance 16 reports?</p> <p>17 A. Remittance reports, that's correct.</p> <p>18 Q. Okay. And who were those made available to, to 19 your knowledge?</p> <p>20 A. Well, primarily to the portfolio managers.</p> <p>21 Q. Okay. Let's move back to --</p> <p>22 A. I'm sorry. I don't think that --</p> <p>23 Q. Were you finished?</p> <p>24 MR. KERR: He has some more questions.</p> <p>25 MR. DOBROWSKI: I'm sorry. Go ahead.</p>
<p align="right">Page 366</p> <p>1 face values don't get written down. And, in fact, if 2 you look at -- we're looking at Knollwood, but if you 3 flip back -- let me identify on the Kodiak page that we 4 were looking at earlier, if I could ask you to just look 5 at Slide 37, what's interesting is, rather than being 6 written down, the face values are actually being written 7 up. If you turn to Slide 37, if you, again, looking at 8 the top left-hand corner, RHY, the face value, 9 March 31st, 2008 increases from 3 million to \$3,133,608 10 and the next month \$3,185,273.</p> <p>11 MR. FALLAS: Right.</p> <p>12 THE WITNESS: What's happening there is, 13 when interest is not paid on that tranche, it's being 14 deferred and accumulated in the face value.</p> <p>15 Now, what's interesting is, if you look at 16 the -- at the trustees' reports each month, you can see 17 that -- that those tranches at the bottom are going to 18 stop receiving cash flow months before they actually do 19 stop receiving cash flow, and as a result of that, the 20 market value of the security drops to zero because 21 people looking at it, sophisticated people looking at it 22 can see that that tranche is only going to get one or 23 two or three more monthly payments and in total that's 24 worth 2 or 3 percent of the face value of the note. 25 And, so, the market value drops to the value of that 2</p>	<p align="right">Page 368</p> <p>1 MR. FALLAS: My question though, is: So, 2 when the cash flow stops, do those tranches technically 3 still exist and continue to exist or is a line crossed 4 through them and said these are gone, bye-bye?</p> <p>5 THE WITNESS: No, they still exist.</p> <p>6 They're in default, but they still exist until the trust 7 is unwound.</p> <p>8 MR. FALLAS: And you say that they will 9 never receive cash flow.</p> <p>10 THE WITNESS: That's correct.</p> <p>11 MR. FALLAS: How do you know that?</p> <p>12 THE WITNESS: Well, because if you look at 13 the remittance reports you've got -- essentially the 14 reason they're not getting cash flow is because the 15 trust's underlying assets have shrunk, they've 16 defaulted, the underlying assets have defaulted. And, 17 so, the value of the trust may have at one time been a 18 billion dollars. Now it's 900 million and then it's 19 800 million and then it's 700 million as a result of 20 realized losses on defaulted securities in the 21 underlying trust. Those securities, once they've 22 defaulted, and the losses have been realized, there's no 23 opportunity for money to come back into those 24 securities. It's -- to put it very sort of simply 25 colloquially, when people default on their mortgages and</p>

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<p align="right">Page 369</p> <p>1 walk away, they don't a couple of years later when their 2 fortunes improve go back and decide to start paying on 3 that defaulted mortgage. That's wiped off the books. 4 That's not coming back. These securities, the 5 underlying trust is shrinking, so the market value is 6 declining, but more importantly, the cash flow coming 7 off of those poor securities has shrunk. And, so, 8 there's not enough money to pay any, but let's say the 9 tranche is down to C or D and at some point, as this 10 process continues, there's not enough money to pay D and 11 then there's not enough money to pay C and the trust 12 unwinds when there's not enough money to pay A and B. 13 We're so low in the capital structure at G, H and 14 Income, if it -- if it gets to that there's not enough 15 money to pay D and then things stabilize, it never 16 stabilizes to the point where money is starting to be 17 paid to E, F, G and H, they're never getting money 18 again. 19 MR. FALLAS: Okay. So, you're saying that 20 if it goes from -- if you take -- if you take the bottom 21 of the line and, you know, it starts, you know, the very 22 bottom stops getting cash flow and then, you know, 23 basically, let's say -- let's take it as 100 is at the 24 top and zero is at the bottom. 25 THE WITNESS: Yes.</p>	<p align="right">Page 371</p> <p>1 never coming back. And the proof of that may not be in 2 my explanation of it to you, but it's in the market 3 prices. If you look at the market prices of the 4 securities we've just looked at, those securities have 5 dropped in value to a penny per dollar or sometimes a 6 hundredth of a penny per dollar. That tells you that 7 the market is saying these securities are never coming 8 back. They're never going to receive another dollar of 9 cash flow. That's why the market value -- after -- when 10 they're still receiving cash flow, the market value 11 drops to 2 or 3 percent, that's because they're going to 12 receive their cash flow for one or two more months and 13 it's 2 or 3 percent of the face value. But after that 14 month or two the securities' value drops to zero and 15 that's because the market can determine, knows that 16 these securities are never coming back, never going to 17 receive another dollar. 18 Q. (BY MR. DOBROWSKI) But, Dr. McCann, what 19 Mr. Fallas is asking is, as I hear it, is -- is that 20 even if the -- it gets to a point where, let's say, if 21 H, G, F and E stop payment but it's still being paid 22 through D, does it subsequently occur such that there 23 are additional Funds being paid so that those lower 24 tiers ultimately do get back some monies and based on 25 your review and analysis, what's the answer?</p>
<p align="right">Page 370</p> <p>1 MR. FALLAS: So, you're saying it goes 2 from zero and then it rises from 1 to 7 to 25. So, 3 basically the bottom 25 percent has stopped. 4 THE WITNESS: Yes. 5 MR. FALLAS: And then it rises to 40. 6 You're saying it never goes in the other direction. 7 You're saying it always -- it will keep on shrinking 8 until -- until the top stops getting money? 9 THE WITNESS: Well, there have been 10 periods of time where the -- the securities were 11 different than these securities but similar in some 12 structuring or structural sense where the securities 13 could stop paying at, let's say, that 25 level and then 14 start back paying later, okay? But these securities, 15 what you could see in the remittance reports is that the 16 underlying assets were so bad -- we haven't talked about 17 what the underlying assets were in these trusts, but the 18 underlying assets were so bad that it was a wildfire 19 that was working from the bottom up through the capital 20 structure and -- and it was working at a phenomenal 21 pace. On some of these securities, you can see the 22 remittance reports running through a tranche in just two 23 or three months and then running through the tranche 24 above it in the next two or three months. These 25 securities were losing their value so rapidly they were</p>	<p align="right">Page 372</p> <p>1 A. Well, theoretically, that's a possibility. The 2 structure allows for a big influx of money to then 3 trickle down to the G and H tranches; but as a factual 4 matter, that wasn't possible in these securities, and 5 the market price reflects it. The fact that the market 6 says these things are worthless means that there's never 7 going to be money coming back down to these tranches. 8 MR. FALLAS: Okay. One last question to 9 clear that up. This is basically a technical difference 10 that I'm making, okay? If the market price falls to a 11 fraction of a penny, market is saying, you know what, it 12 ain't going to happen, okay, the market could be wrong 13 theoretically, right? 14 THE WITNESS: I'm sorry, not about these 15 securities. It couldn't be wrong about these securities 16 just because of the structure of the trust. If you 17 think about it again, think of it as a pool of mortgages 18 and it's shrinking and there's no -- the pool, the size 19 of the trust is shrinking because people are defaulting 20 on their mortgages and walking away. And as they walk 21 away, there's less and less cash flow going out to the 22 tranches and so that H and G tranches have stopped 23 receiving cash flow because the trust assets have 24 shrunk. People have walked away from their debt. 25 Now, as a theoretical matter, as a</p>

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<p>1 technical matter, if they picked back up their mortgages</p> <p>2 a couple years later and started paying them, that's</p> <p>3 possible, but it just -- it doesn't happen, and it will</p> <p>4 never happen with these securities.</p> <p>5 Q. (BY MR. DOBROWSKI) And has it happened with</p> <p>6 these securities since 2007?</p> <p>7 A. No. The bottom tranches in structured finance</p> <p>8 deals have stabilized at about 4 cents on the dollar and</p> <p>9 they're never -- never going to be higher than that.</p> <p>10 The bottom tranches of the biggest deals</p> <p>11 have stabilized at about 4 cents on the dollar. The</p> <p>12 other deals, securities are worthless. These securities</p> <p>13 have dropped to zero, and they haven't rebounded.</p> <p>14 MR. DOBROWSKI: Does that answer your</p> <p>15 questions?</p> <p>16 MR. FALLAS: Yeah.</p> <p>17 MR. DOBROWSKI: Okay. Tell me what you</p> <p>18 would like me to do, Mr. Chair.</p> <p>19 MR. KERR: Well, how much longer do you</p> <p>20 have with your direct?</p> <p>21 MR. DOBROWSKI: Well, I'm not going to be</p> <p>22 finished in 5 minutes, I can tell you that.</p> <p>23 MR. KERR: Ten?</p> <p>24 MR. DOBROWSKI: No.</p> <p>25 MR. KERR: Okay. All right. Fair enough.</p>	<p>1 \$14 million in what was labeled the subordinated</p> <p>2 tranche.</p> <p>3 And then we were turning to, I think,</p> <p>4 Slide 44, 45 and 46 when we broke. I'm just going to</p> <p>5 identify Slide 45 and 46 for you. They're containing</p> <p>6 excerpts, quoted language from the Knollwood prospectus</p> <p>7 that tracks pretty much verbatim the quotes I showed you</p> <p>8 from the Kodiak prospectus. The first one, Slide 44,</p> <p>9 defines default the same way the Kodiak prospectus did,</p> <p>10 which is to say, so long as the most senior tranches are</p> <p>11 receiving cash flows, the cash flows can stop to the</p> <p>12 lower tranches and it's not an event of default.</p> <p>13 And then if you flip to Slide 45, Slide 45</p> <p>14 is the same as language we saw in the Kodiak deal that</p> <p>15 talks about how cash flow gets diverted from the lower</p> <p>16 tranches, like the ones that these Funds invested in to</p> <p>17 the higher tranches, if the higher tranches get in any</p> <p>18 jeopardy.</p> <p>19 And the language I've quoted here on</p> <p>20 default and cash flow diversion I've quoted from two</p> <p>21 prospectuses. I could show you the same language in a</p> <p>22 hundred or 200 prospectuses. This language is common</p> <p>23 across the securities in these Funds.</p> <p>24 Q. What is the significance of Slide 46, which</p> <p>25 you -- does this also -- Slide 46 come from the</p>
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<p>1 Let's take lunch, then. It's now about 10 after, I</p> <p>2 guess.</p> <p>3 MR. DOBROWSKI: I've got 12:15. So, 1:30?</p> <p>4 MR. KERR: Yeah.</p> <p>5 MR. DOBROWSKI: Yes, sir.</p> <p>6 (Recess taken from 12:13 to 1:35.)</p> <p>7 MR. KERR: When we parted at noon, you</p> <p>8 were in your direct examination.</p> <p>9 MR. DOBROWSKI: Yes, sir. And hopefully</p> <p>10 we'll knock this out in short order.</p> <p>11 MR. KERR: All right, sir. Very good.</p> <p>12 And I remind you that you're still under oath, sir.</p> <p>13 THE WITNESS: Yes. Thank you.</p> <p>14 Q. (BY MR. DOBROWSKI) Let's turn to Slide 41,</p> <p>15 Dr. McCann, and this relates to the Knollwood bonds that</p> <p>16 were purchased by the four closed-end funds. Can you</p> <p>17 explain what Slide 41 represents, sir, briefly?</p> <p>18 A. I think this is where we left off. I</p> <p>19 identified Slide 41 as the capital structure for the</p> <p>20 Knollwood trust, and Morgan Keegan Funds bought the E</p> <p>21 and what was labeled as the subordinated tranche.</p> <p>22 And then if we flip to Slide 42, this</p> <p>23 reflected the losses in the E tranche. The Funds lost</p> <p>24 all \$8 million invested in the E tranche. And if you</p> <p>25 flip to the next slide, Slide 43, you see they lost</p>	<p>1 Knollwood prospectus?</p> <p>2 A. It does, yes.</p> <p>3 Q. And what's its significance, sir?</p> <p>4 A. Well, there's some talk about what was</p> <p>5 disclosed and whether the risks of these Funds were</p> <p>6 disclosed. I excerpted this language verbatim. I</p> <p>7 boiled it down by just eliminating some sentences. So,</p> <p>8 I compressed three paragraphs from the prospectus for</p> <p>9 the Knollwood security; and this language literally</p> <p>10 would be the best description of the Funds I can imagine</p> <p>11 or at least in one paragraph this slide would describe</p> <p>12 the Funds, the RMK Funds perfectly.</p> <p>13 Q. Okay. So, to make it quick, if you could just</p> <p>14 have the Panel -- direct the Panel to read Slide 46 to</p> <p>15 itself, I think that will move things along very</p> <p>16 quickly.</p> <p>17 MR. KERR: All right. We'll do a quick</p> <p>18 study.</p> <p>19 MR. DOBROWSKI: Well, you can take as much</p> <p>20 time as you want.</p> <p>21 Q. (BY MR. DOBROWSKI) Dr. McCann, can you briefly</p> <p>22 now explain to the Panel what language in this</p> <p>23 disclosure from the Knollwood is important compared with</p> <p>24 the disclosures made by the four closed-end funds, sir?</p> <p>25 A. Sure. Think about what this is saying in big</p>

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<p>1 understood you to say.</p> <p>2 THE WITNESS: Yes, no. What I'm saying</p> <p>3 is --</p> <p>4 MR. MARTIN: Okay. Where am I wrong?</p> <p>5 THE WITNESS: Let me -- let's go to the</p> <p>6 backup. I think it will help if we look at the Arispe</p> <p>7 as an example in the large spiral-bound package. It's</p> <p>8 the first tab. And if we go towards the end of that</p> <p>9 first tab you will see the market adjusted exhibit where</p> <p>10 it's calculated. Let me suggest that we look at what</p> <p>11 will be Page 35 and 36 of 54. Thirty-five and 36 of 54.</p> <p>12 MR. MARTIN: Okay.</p> <p>13 THE WITNESS: Now, the way this exhibit is</p> <p>14 laid out, Exhibit 4, starting on Page 35, we have the</p> <p>15 net investment is the amount that Mr. Arispe had</p> <p>16 invested in the RMK Funds. You see it grows a little</p> <p>17 bit in July of 2007. If we look, I think what we'd see</p> <p>18 is that there was an additional purchase. So, there's</p> <p>19 an opening purchase in the Fund and then an additional</p> <p>20 purchase. And then later you see, if you go down to May</p> <p>21 of 2008, you can see the number in that net investment</p> <p>22 column declining a little bit. That's because there are</p> <p>23 dividends that are being taken out of the portfolio --</p> <p>24 that are being withdrawn as cash, not being reinvested.</p> <p>25 Now, imagine that sort of pattern. You've got a</p>	<p>1 has in, \$26,474. The securities are worth \$3,577.</p> <p>2 That's the account value column. The difference between</p> <p>3 those two numbers is the out-of-pocket loss. \$26,000</p> <p>4 have been paid net of all of withdrawals for units that</p> <p>5 are currently worth \$3,577. So, the out-of-pocket loss</p> <p>6 is \$22,897.</p> <p>7 Now, the Vanguard portfolio that has</p> <p>8 exactly the same inflows and outflows as these Morgan</p> <p>9 Keegan Funds would be worth \$33,303. That's in Column</p> <p>10 4. That diversified portfolio column is the Vanguard</p> <p>11 High Yield Corporate Bond Fund and it's got exactly the</p> <p>12 same -- it's created with exactly the same two first</p> <p>13 purchases and all of the same withdrawals that are made</p> <p>14 from the RMK Funds.</p> <p>15 So, the Vanguard portfolio would be worth</p> <p>16 \$33,303 when the RMK Funds are worth \$3,577. The</p> <p>17 difference between those two numbers is the \$29,727 on</p> <p>18 the far right. That's the market adjusted damages.</p> <p>19 If -- if Mr. Arispe had been in the Vanguard Fund, he</p> <p>20 would have \$33,000 instead of \$3,000. The difference is</p> <p>21 \$30,000 market adjusted damages.</p> <p>22 MR. MARTIN: Thank you.</p> <p>23 MR. DOBROWSKI: Now I pass the witness.</p> <p>24 MR. KERR: Do you have any questions?</p> <p>25 MR. FALLAS: Yeah.</p>
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<p>1 purchase, a second larger purchase, dividends up to that</p> <p>2 point in time are being reinvested, but then starting</p> <p>3 later in -- in 2008, the dividends are not being</p> <p>4 reinvested. Now, if you wanted to follow that same set</p> <p>5 of cash flows in the alternative Fund, in the Vanguard</p> <p>6 High Yield Fund, you would put the first \$10,086 in the</p> <p>7 Vanguard Fund. You would -- any -- any dividends that</p> <p>8 were paid on the Vanguard Fund you would just reinvest</p> <p>9 because you're not taking the money out of this</p> <p>10 portfolio either. Then in July of 2007, you would</p> <p>11 invest another \$18,000 of new money into the Vanguard</p> <p>12 Fund. And then starting in -- in April or May of 2008,</p> <p>13 you would start withdrawing some money out of your</p> <p>14 growing Vanguard portfolio. Now, your Vanguard</p> <p>15 portfolio is growing because of the two purchases you</p> <p>16 made and the reinvested dividends. But starting in May</p> <p>17 of 2008, it looks like you would be taking out maybe \$50</p> <p>18 a month because that's what you're doing in the RMK</p> <p>19 Fund. So, we'd start taking out \$50 a month from the --</p> <p>20 from the Vanguard portfolio or whatever would match the</p> <p>21 cash flows on the same day.</p> <p>22 Now, if you flip to the next page, if you</p> <p>23 look at the net investment column, you see at the</p> <p>24 bottom, July 31st, 2010, it says \$26,474? That's how</p> <p>25 much net, in your words, cash in, cash out Mr. Arispe</p>	<p>1 MR. KERR: Do you want to ask it now or</p> <p>2 after the cross-examination?</p> <p>3 MR. FALLAS: Right now. At least one.</p> <p>4 MR. KERR: Okay.</p> <p>5 MR. FALLAS: Okay. When you take into</p> <p>6 account dividends, you're only talking about dividends</p> <p>7 actually received and not reinvested, correct?</p> <p>8 THE WITNESS: Not precisely. If you look</p> <p>9 at the summary page, we actually list all of the</p> <p>10 dividends. So, for Mr. Arispe, whether he reinvested</p> <p>11 them or not, he received -- he received \$9,000 of</p> <p>12 dividends. The -- the clearest way to see it is on --</p> <p>13 is on Page 12 of 54 and in the large spiral-bound</p> <p>14 package, if I may, it's behind Tab 1, 12 of 54. This is</p> <p>15 the bottom of an exhibit that's called a Profit and Loss</p> <p>16 By Security. And you will see there that the column</p> <p>17 that is headed "Purchases" totals \$35,623.65. The sales</p> <p>18 or held value at the end totals \$3,808. The difference</p> <p>19 between those two is the capital loss, the \$31,815. The</p> <p>20 dividend column adds up to \$8,918. If you offset that</p> <p>21 \$8,918 against the \$31,815, you get the \$22,897 and</p> <p>22 those are all the dividends, whether they're reinvested</p> <p>23 or taken out. If they're reinvested, essentially that</p> <p>24 dollar value goes in both the dividend column and the</p> <p>25 purchases column, and you can see that, if you flip back</p>

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<p align="right">Page 397</p> <p>1 a few pages, you'll see examples where there's a 2 dividend that's reinvested, it shows up both as a 3 purchase -- an increase in the quantity held and a 4 dividend. 5 The confusion may have come when we were 6 talking about market adjusted damages because there, 7 there is a difference between dividends that are taken 8 out and dividends that are reinvested. With a market 9 adjusted damages calculation -- 10 MR. FALLAS: I'm just saying, basically, 11 where you have proceeds, that's only money actually 12 coming, you know, into the investor's pocket, right? 13 THE WITNESS: I'm sorry. You're on Slide 14 69? 15 MR. FALLAS: Yes. 16 THE WITNESS: That's the proceeds from the 17 sale of units, and it would not include dividends that 18 are taken out in cash. So, that's -- over the course of 19 the account, you buy 125 units, some of it with initial 20 cash, some of it with reinvested dividends. The 21 proceeds number is what you got when you sold 125 units, 22 however they were acquired. 23 MR. FALLAS: What I'm asking about, 24 basically the money that the Fund paid out and then the 25 investor chose to buy more shares instead of spending</p>	<p align="right">Page 399</p> <p>1 CROSS-EXAMINATION 2 Q. (BY MR. WEISS) Good afternoon, Dr. McCann, good 3 to see you again. 4 A. Good to see you. Thank you. 5 Q. Since you've done this once or twice times, 6 many times, you know the drill. I'm going to ask you a 7 number of questions and if at any time you don't 8 understand my question, by all means, let me know and 9 I'll be happy to rephrase the question to ensure that 10 you and I are on the same page. 11 I'm going to follow up where we just 12 left -- left off with some of the questions about this 13 profit and loss that was prepared. First of all, did 14 you physically prepare this report, or did someone or 15 ones individuals in your shop do so? 16 A. Oh, individuals in my shop. People entered the 17 data, created the exhibits, printed out the paper and 18 assembled it. 19 Q. Did you personally actually go back over the 20 account statements and the data that was input and 21 ensure that it was accurately done and -- and 22 otherwise -- yeah, confirmed that it was done properly? 23 A. Well, some. I reviewed some of the account 24 statements and some of the analysis, but this is 25 something that we've done thousands of times, and I</p>
<p align="right">Page 398</p> <p>1 it, where does that money show up? 2 THE WITNESS: Well, it's almost a wash 3 because it's showing up both in the purchases -- for 4 instance, if there's a \$100 dividend, it's showing up as 5 a \$100 dividend and it's showing up as \$100 purchase of 6 units. And, so, it's, on that day, a wash. It does 7 affect the bottom line damage figure to the extent that 8 there are losses on those new purchases. So, if you 9 think about it as a wash on the first day because it's 10 showing up both in the dividend and in the purchases 11 column, then if the units are held and they lose \$50, 12 then that \$50 loss is showing up as a loss. So, it's 13 including losses on all purchases, including purchases 14 that are made with reinvested dividends. But the 15 dividend itself is showing up as an offset, the hundred 16 dollars, in my example. 17 MR. FALLAS: Okay. 18 MR. KERR: All right. You may cross. 19 MR. WEISS: Thank you. 20 MR. KERR: Okay, Mr. Weiss, just for my 21 record, I didn't get your first name. 22 MR. WEISS: Oh, that's okay. It's Terry, 23 T-E-R-R-Y. And it's W-E-I-S-S, is the last name. 24 MR. KERR: Please proceed. 25</p>	<p align="right">Page 400</p> <p>1 don't recall when the last time an actual error was 2 pointed out in anything that my office has done. If 3 it's been a year, it's been five years. So, I feel 4 pretty confident, although we're all human, that these 5 exhibits are created accurately. 6 Q. Okay. You said you reviewed some. What 7 percent of the -- we've got a fairly big book here. 8 What percent of the total collection of account 9 statements did you actually review and data that was 10 input? 11 A. I don't know. Something less than 20 percent, 12 maybe 10 percent. 13 Q. Okay. Now, following up on some of the 14 questions that were just asked by the -- by the Panel, 15 first of all, just so I understand the analysis here, 16 your P&L numbers, profit and loss numbers, run through 17 June, July of 2010; is that correct? 18 A. Yes. 19 Q. And, again, just so we're all familiar with the 20 facts, when was it that Mr. Stein left Morgan Keegan and 21 joined his new firm, Raymond James? 22 A. I don't recall. 23 Q. March of 2008? Does that sound about right to 24 you? 25 A. That may be right. I just don't recall, as I</p>

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<p style="text-align: right;">Page 437</p> <p>1 Dr. McCann, that the prospectus and the SAI for the 2 closed-end funds advised that the investments involve a 3 high degree of risk? 4 A. At least in part some language like that. 5 Q. And isn't it true that the prospectus and SAIs 6 indicate that the Funds could invest a majority of their 7 assets in below-investment-grade bonds? 8 A. Yes. 9 Q. And isn't it true that under the Funds' 10 policies that the Funds could invest up to 100 percent 11 in below-investment-grade bonds? 12 A. I believe that's correct. 13 Q. And isn't it true under the policy -- 14 MR. FALLAS: Excuse me. 15 MR. KERR: Do you have a question? 16 MR. FALLAS: No, I just wanted to -- could 17 you -- what was your question again? 18 MR. WEISS: My question was -- you can 19 read it back, if you want, so I don't mess it up. 20 (The record was read as requested.) 21 MR. KERR: And that's in the context of 22 what is in the prospectus, what you said. 23 THE WITNESS: Correct. 24 MR. FALLAS: Okay. So, let me -- so, to 25 rephrase what you just said, it's allowable for the Fund</p>	<p style="text-align: right;">Page 439</p> <p>1 that would be inconsistent with that investment strategy 2 as stated on the front cover of the prospectus; isn't 3 that true? 4 A. I don't see why. The Birmingham municipalities 5 bonds would certainly have some capital appreciation 6 potential. Municipal bonds can have both income and 7 capital appreciation potential. 8 MR. WEISS: We're at a good breaking 9 point, if the Panel wishes. 10 MR. KERR: Yeah, I think it's time for 11 one. 12 MR. WEISS: Okay. Thank you, sir. 13 (Recess taken from 3:05 to 3:19.) 14 MR. KERR: Before we start with your 15 additional questions, a couple of things. The Panel was 16 talking amongst ourselves and don't anybody read 17 anything into this, but it's a fact that in your damages 18 model or presentation there's one element that's not on 19 the same page. It's not in a one-page summary and 20 that's the out-of-pockets, so to speak. 21 MR. DOBROWSKI: Yes, sir. 22 MR. KERR: The out-of-pockets are 23 scattered through a lot of pages in McCann No. 1. We 24 would just like for y'all informally -- you can agree 25 on, yeah, that's the number that is presented there,</p>
<p style="text-align: right;">Page 438</p> <p>1 to invest all of its assets in below-investment-grade? 2 Is that what that means? 3 THE WITNESS: I think that there's no 4 limit, in the same sense that there's no limit the Fund 5 could invest 100 percent in municipal bonds. There's 6 no -- my recollection is there's no limit that says you 7 can only invest 80 percent in below-investment-grade 8 corporate bonds. So, I think I was just agreeing with 9 Mr. Weiss, that the prospectus allowed the Fund to 10 invest up to 80 -- up to 100 percent in 11 below-investment-grade bonds or municipal bonds or a 12 whole lot of different things. 13 Q. (BY MR. WEISS) Well, I'm going to follow up on 14 what you just said, Dr. McCann, and maybe we can take a 15 short break, if the Panel wishes, after this back and 16 forth. But just going to the front page of the 17 prospectus of the very beginning of Tab 6, under 18 investment strategy, it says right there, "The Fund will 19 seek to achieve its investment objectives by investing a 20 majority of its assets in a diversified portfolio of 21 below-investment-grade securities offering attractive 22 yields and capital appreciation potential," right? 23 A. That's what that sentence says. 24 Q. And, Dr. McCann, if the Fund, to follow up on 25 your point, invested 100 percent in municipal bonds,</p>	<p style="text-align: right;">Page 440</p> <p>1 just put that on one page for us. 2 MR. WEISS: I think, actually, our, if I'm 3 not mistaken, our P&L does that. 4 MR. KERR: Okay. Just so long as it's in 5 one place. Not that that number necessarily means 6 anything, but it's just that's the missing element at 7 least in your analysis on the one -- on the same page. 8 MR. WEISS: We'll take care of it. Either 9 we will or together counsel will, to make life easier. 10 MR. KERR: Right. We're not saying that 11 we agree with those numbers either. 12 MR. WEISS: I understand. 13 MR. KERR: That's just to put the analysis 14 together on one page. 15 MR. WEISS: Less is more. 16 MR. KERR: There you go. I wish I had 17 said that. 18 MR. WEISS: You probably have. 19 MR. KERR: I have. And on that subject 20 how much -- I know we must finish him today. 21 MR. WEISS: Correct, and as quickly as 22 possible. 23 MR. KERR: Yeah, and so how much more do 24 you have? 25 MR. WEISS: We were just talking about</p>

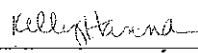
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<p style="text-align: right;">Page 513</p> <p>1 FURTHER RECROSS-EXAMINATION</p> <p>2 Q. (BY MR. WEISS) Dr. McCann, you are assuming,</p> <p>3 are you not, sir, in your analysis that the number of</p> <p>4 securities that are being internally priced by Morgan</p> <p>5 Keegan remains constant during the entire year of 2007?</p> <p>6 A. No.</p> <p>7 Q. You're aware, sir, are you not, that by October</p> <p>8 of 2007, in fact, the number of securities that were</p> <p>9 being internally priced by Morgan Keegan had dropped to</p> <p>10 just a handful, are you not, sir?</p> <p>11 A. I'd have to go back and look at the filings.</p> <p>12 We're just using the notations that you have on the --</p> <p>13 on the -- on the filings. So, whatever that number is,</p> <p>14 it is.</p> <p>15 Q. And aren't you aware, sir, that by October of</p> <p>16 2007, Hyperion took over the full pricing of securities</p> <p>17 of internally-priced securities?</p> <p>18 A. Yes, and that explains a great deal of the</p> <p>19 losses, yes.</p> <p>20 Q. And, in fact, Dr. McCann, that by that point in</p> <p>21 time, the number of internally-priced securities that --</p> <p>22 strike that -- the number of -- of internally-priced</p> <p>23 securities that were being priced by Morgan Keegan was</p> <p>24 less than 30; isn't it true, sir?</p> <p>25 A. Yes, that would be true, I think. I didn't</p>	<p style="text-align: right;">Page 515</p> <p>1 the list?</p> <p>2 THE WITNESS: Yes.</p> <p>3 MR. FALLAS: Do you know if any of those</p> <p>4 other Funds did similar things in their prospectus?</p> <p>5 THE WITNESS: No, I don't.</p> <p>6 MR. FALLAS: So, you wouldn't be able to</p> <p>7 say one way or the other?</p> <p>8 THE WITNESS: Not without looking at the</p> <p>9 prospectuses, whether they had a clear statement about</p> <p>10 what their principal strategy was, as opposed to a long</p> <p>11 list of securities they may invest in.</p> <p>12 MR. FALLAS: Okay. And then with regard</p> <p>13 to the SEC document --</p> <p>14 THE WITNESS: Yes.</p> <p>15 MR. FALLAS: -- the big one, the title of</p> <p>16 it is used "Final Rule: Registration Form Used by</p> <p>17 Open-end Management Investment Companies." I take this</p> <p>18 to mean that it applies to open-end funds, basically.</p> <p>19 Just open-end funds. Is that -- would you say a similar</p> <p>20 thing?</p> <p>21 THE WITNESS: Yes, it's a slightly</p> <p>22 different form for the closed-end fund. I forget what</p> <p>23 it's called. It's essentially identical, but you're</p> <p>24 right, this is referring to open-end funds. I have seen</p> <p>25 a similar document -- what I said on direct was I</p>
<p style="text-align: right;">Page 514</p> <p>1 understand what you were referring to was after the</p> <p>2 period where Hyperion took over the valuations and wrote</p> <p>3 down substantially all these securities that Morgan</p> <p>4 Keegan had been internally pricing. It's true, after</p> <p>5 they did that, there weren't many securities still being</p> <p>6 priced by Morgan Keegan.</p> <p>7 MR. WEISS: Those are all the questions I</p> <p>8 have.</p> <p>9 MR. KERR: All right. Do you have any</p> <p>10 more?</p> <p>11 MR. DOBROWSKI: No, sir.</p> <p>12 MR. KERR: Very good. Do my colleagues</p> <p>13 have any questions to ask this witness?</p> <p>14 MR. MARTIN: No.</p> <p>15 MR. KERR: Do you have any questions?</p> <p>16 MR. FALLAS: Dr. McCann, with respect to</p> <p>17 all of the other high yield bond funds, closed-end, the</p> <p>18 ones that were not Morgan Keegan, you had some</p> <p>19 discussion earlier about how these Funds in the</p> <p>20 prospectus listed all the different types of securities</p> <p>21 that they could potentially invest in, and you felt</p> <p>22 like -- you felt like they were responsible for really</p> <p>23 talking about what they primarily invest in and they</p> <p>24 shouldn't really -- they should make very little use of</p> <p>25 the ones that they really don't use, but -- but are on</p>	<p style="text-align: right;">Page 516</p> <p>1 haven't seen this adopting release. What I saw was the</p> <p>2 form and the instructions to the form that Mr. Dobrowski</p> <p>3 referred me to starting after the first 71 pages, that's</p> <p>4 the document that I had seen before, and I've seen that</p> <p>5 same document for the closed-end funds and it says</p> <p>6 substantially the same thing.</p> <p>7 MR. FALLAS: Okay. So, there is a</p> <p>8 corresponding one for closed-end funds.</p> <p>9 THE WITNESS: Yes.</p> <p>10 MR. FALLAS: And the language that he</p> <p>11 wanted us to look at is basically the same language.</p> <p>12 THE WITNESS: Yes. Maybe I'll provide it</p> <p>13 to Mr. Dobrowski and he might share it with you, but,</p> <p>14 yes, there's a similar document for closed-end funds.</p> <p>15 MR. FALLAS: Just to reinforce, you don't</p> <p>16 know at this point one way or the other whether some of</p> <p>17 those similar funds in the same category, you know, had</p> <p>18 the same kind of listing on their prospectus about their</p> <p>19 securities?</p> <p>20 THE WITNESS: That's correct.</p> <p>21 MR. FALLAS: I'm not sure who to ask this</p> <p>22 question to, but since you're an expert in various</p> <p>23 areas, I guess you could probably answer it. This</p> <p>24 particular arbitration is directed at Morgan Keegan &</p> <p>25 Company, Incorporated, right?</p>

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Page 517	<p>1 THE WITNESS: Yes.</p> <p>2 MR. FALLAS: Did I understand correctly</p> <p>3 that there are other sections that have been separated</p> <p>4 out that are directed towards the other entities, like</p> <p>5 Morgan Asset Management, things like that?</p> <p>6 THE WITNESS: By "other sections," I'm not</p> <p>7 sure I know what you mean.</p> <p>8 MR. FALLAS: Have they separated -- are</p> <p>9 there separate -- have they separated out -- do they</p> <p>10 have separate hearings set up for this same --</p> <p>11 THE WITNESS: I'm sorry. I don't know the</p> <p>12 answer to that.</p> <p>13 MR. KERR: There's no way to know -- he's</p> <p>14 an expert here in this case and what other cases might</p> <p>15 be --</p> <p>16 THE WITNESS: I'm not involved in</p> <p>17 litigation directly involving Regions or Morgan Asset</p> <p>18 Management. So, I just don't know about any other</p> <p>19 litigation.</p> <p>20 MR. DOBROWSKI: And the claims that we</p> <p>21 seek are here against Morgan Keegan, in their capacity</p> <p>22 as a defendant, for fraud. So, any other entity is</p> <p>23 frankly irrelevant to this proceeding.</p> <p>24 MR. CARLIN: We'll talk about that in</p> <p>25 closing argument.</p>	Page 519	<p>1 due to structured finance securities, and he was saying,</p> <p>2 as he did again today, that in order to be included,</p> <p>3 there had to be securities that were held adjoining</p> <p>4 quarter ends. And, so, a security that was bought and</p> <p>5 sold within the quarter or bought in one quarter and</p> <p>6 sold the next quarter wouldn't be included. There's</p> <p>7 very little of that in these Funds, but he's right about</p> <p>8 that.</p> <p>9 And, so, I went back to the office after</p> <p>10 the Garrett hearing and talked through with my staff</p> <p>11 again about how this calculation was done. And that's</p> <p>12 what prompted it. The very next week I testified in</p> <p>13 another Morgan Keegan case here in Houston, I think, and</p> <p>14 I reported that while the exhibit we turned over in the</p> <p>15 20-day exchange said 73 or 74 percent, we had missed</p> <p>16 some securities and the right number was actually</p> <p>17 higher. It was 82 percent.</p> <p>18 So, it was actually questioning from</p> <p>19 Mr. Weiss that prompted me to go back and look at it.</p> <p>20 MR. KERR: All right. That's the only</p> <p>21 question I had.</p> <p>22 MR. WEISS: Can I just very quickly follow</p> <p>23 up with -- with one question that was just asked about</p> <p>24 this document that deals with open-end funds?</p> <p>25 MR. KERR: All right.</p>
Page 518	<p>1 MR. WEISS: I think we take a different</p> <p>2 view in part because these very same Claimants have sued</p> <p>3 for the identical investments, losses, et cetera -- same</p> <p>4 claims, same everything.</p> <p>5 MR. DOBROWSKI: That's irrelevant -- I'm</p> <p>6 sorry.</p> <p>7 MR. KERR: Go ahead. Let him finish.</p> <p>8 MR. DOBROWSKI: Yes, sir. I'll shut up.</p> <p>9 MR. WEISS: This has nothing to do with</p> <p>10 Dr. McCann, but these very same Claimants have made the</p> <p>11 same claims against Morgan Asset Management and other</p> <p>12 affiliates under the big Regions umbrella.</p> <p>13 MR. DOBROWSKI: It's a fraud claim.</p> <p>14 MR. FALLAS: One second. One second.</p> <p>15 MR. KERR: Sir, I have a question for you.</p> <p>16 I was just curious. What was it that caused you to go</p> <p>17 back and look at these internally priced -- the basic</p> <p>18 material upon which your analysis was based on the</p> <p>19 percentage of these securities that were internally</p> <p>20 priced between the hearing of Garrett and this hearing</p> <p>21 to come up with your difference in opinions?</p> <p>22 THE WITNESS: Yes, it was questioning from</p> <p>23 Mr. Weiss, actually. Believe it or not. We were here a</p> <p>24 couple months ago and Mr. Weiss was asking me about</p> <p>25 the -- the internally-priced securities and the losses</p>	Page 520	<p>1 FURTHER RECROSS-EXAMINATION</p> <p>2 Q. (BY MR. WEISS) Dr. McCann, would you please --</p> <p>3 this is 294, the big thick registration form used by</p> <p>4 open-end fund management and if you would, please, turn</p> <p>5 to -- and it may be several documents put together, so</p> <p>6 I'll do the best I can to direct you, but it's 18 of 56,</p> <p>7 and it's in that same final version that Mr. Dobrowski</p> <p>8 asked about, and it has an Item 5 that says</p> <p>9 "Management's Discussion of Fund Performance." Did you</p> <p>10 find it? That Item 5 is in the middle of the page.</p> <p>11 A. Yes.</p> <p>12 Q. Okay. If you will look under the risk section</p> <p>13 of (c), it says, does it not, Dr. McCann, again, this is</p> <p>14 for open-end funds, we know, that the obligation is to</p> <p>15 "Disclose the principal risks of investing in the Fund,</p> <p>16 including the risks to which the Fund's particular</p> <p>17 portfolio as a whole is expected to be subject and the</p> <p>18 circumstances reasonably likely to affect adversely the</p> <p>19 Fund's net asset value, yield or total return."</p> <p>20 Do you see that?</p> <p>21 A. I'm sorry. I don't.</p> <p>22 Q. Right above Item 5?</p> <p>23 A. Oh, I'm sorry. I was looking below. Yes.</p> <p>24 Q. Right above Item 5, right, Dr. McCann?</p> <p>25 A. Yes.</p>

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1 Mr. Chairman.	1 (Proceedings recessed at 5:36 p.m.)
2 MR. KERR: Okay. Good.	2
3 MR. DOBROWSKI: Mr. Chair, if the Panel	3
4 wants to start earlier tomorrow or go later tomorrow	4
5 night, we're certainly willing to do it. We've had --	5
6 one of our Panelists is not comfortable coming early. I	6
7 think we could stay late without a bunch of issues.	7
8 We're happy to do it.	8
9 MR. KERR: And, you know, I have done this	9
10 before in some FINRA cases. I mean, if we don't finish	10
11 Friday, the gang is all here, we can come back Saturday	11
12 morning. I'd give up my tennis game.	12
13 MR. DOBROWSKI: If I had one -- it works	13
14 for us. Frankly, that's what we did in the last one, is	14
15 we finished the evidence and then came back for closing.	15
16 MR. KERR: Yes, and that's a good way to	16
17 do it.	17
18 MR. MARTIN: That will not work for me. I	18
19 have two board meetings on Saturday.	19
20 MR. DOBROWSKI: Or any time the next week.	20
21 MR. KERR: Yeah, we could find the time	21
22 for closing argument, sure.	22
23 MR. DOBROWSKI: I think we did 50 minutes	23
24 last time each, 55 or 60 minutes each, Terry, for	24
25 closing last time?	25
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1 MR. WEISS: That's a Carlin question.	1 STATE OF TEXAS
2 MR. CARLIN: Yeah, I assume it's going to	2 COUNTY OF HARRIS
3 be an hour each.	3
4 MR. KERR: We can pick that up next week.	4 REPORTER'S CERTIFICATE
5 MR. CARLIN: We're going to have to talk	5 ARBITRATION HEARING
6 scheduling because unfortunately we can talk about when	6 October 13, 2010
7 that might be doable. I'm in Atlanta from Wednesday	7
8 through Friday of next week.	8 I, the undersigned Certified Shorthand Reporter in
9 MR. KERR: This is not your last Morgan	9 and for the State of Texas, certify that the facts
10 Keegan --	10 stated in the foregoing pages are true and correct.
11 MR. CARLIN: Actually, that's not a Morgan	11 I further certify that I am neither attorney or
12 Keegan matter. It's not my only client. It's not my	12 counsel for, related to, nor employed by any parties to
13 only case. I've got a two-week jury trial in November	13 the action in which this testimony is taken and,
14 on something that has nothing to do with securities. It	14 further, that I am not a relative or employee of any
15 has to do with disintegrating air conditioners.	15 counsel employed by the parties hereto or financially
16 MR. DOBROWSKI: We will bend to Mr. Carlin	16 interested in the action.
17 and the Panel's will.	17 SUBSCRIBED AND SWORN TO under my hand and seal of
18 MR. CARLIN: We want to get it done, but	18 office on this the _____ day of _____,
19 we'll talk about that scheduling when we get to that.	19 _____
20 MR. KERR: Okay. We're just going to be	20  Digitally signed by Kelly Hanna Date: 2010.10.29 10:40:50 -07:00 Reason: I am the author of this document Location: Houston, TX
21 mindful of our time.	21 Kelly Hanna, CSR, RPR, CRR, CMRS
22 MR. DOBROWSKI: Yes, sir.	22 Texas CSR 1654
23 MR. KERR: We're adjourned. See you at	23 Expiration: 12/31/2011
24 9:00 in the morning.	24 Firm Registration No. 581
25 MR. DOBROWSKI: Thank you.	25 1225 North Loop West Suite 327 Houston, Texas 77008 713.840.8484 - 713.626.1966 www.hannareporting.com

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<p>1 BEFORE FINRA DISPUTE RESOLUTION</p> <p>2 In the Matter of the Arbitration Between:</p> <p>3 RICHARD R. ARISPE, JIMMY A.) 4 BURKE, PEGGY E. BURKE, TODD) 5 ADELA CHRISTINE COLLADO,) 6 CHARLES K. COLVIN, C & C) 7 ERECTION, INC., NANCY GORDON,) 8 SUSAN W. HACKNEY, DON) 9 H. JONES, SUZANN S. JONES,) 10 WILLIAM A. RHODES, JR., DAWN) 11 SCHUESSLER, KENNETH W. SEARS,) 12 KENNETH W. SEARS, JR., REINE) 13 M. SEARS, DANIEL J. SEARS,) 14 KENNETH W. SEARS, III, JUDY) 15 STRICKLAND, ELIZABETH STEIN &) 16 SHANA L. STEIN,) 17 Claimants) 18 v.) FINRA CASE NO. 09-006655 19 MORGAN KEEGAN & COMPANY,) 20 Respondent.)</p> <p>21</p> <p>22 ARBITRATION PROCEEDINGS</p> <p>23 October 14, 2010</p> <p>24 DAY 3</p> <p>25 ARBITRATION PROCEEDINGS was taken in the</p> <p>26 above-styled and numbered cause on the 14th day of</p> <p>27 October, 2010, from 9:03 a.m. to 6:44 p.m., before Kelly</p> <p>28 Hanna, Certified Shorthand Reporter in and for the State</p> <p>29 of Texas, reported by computerized stenotype machine at</p> <p>30 the offices of Greenberg Traurig, 1000 Louisiana, Suite</p> <p>31 1700, Houston, Texas, pursuant to the Federal Rules of</p> <p>32 Civil Procedure and the provisions stated on the record</p> <p>33 or attached hereto.</p>	<p>1 INDEX</p> <p>2 PAGE</p> <p>3 JAMES KELSOE, JR.</p> <p>4 Direct Examination by Mr. Dobrowski537</p> <p>5 Cross-Examination by Mr. Weiss661</p> <p>6 ReDirect Examination by Mr. Dobrowski751</p> <p>7 ReCross-Examination by Mr. Weiss761</p> <p>8 Further ReDirect Examination by Mr. Dobrowski ...764</p> <p>9 CHARLES MAXWELL</p> <p>10 Direct Examination by Mr. Dobrowski791</p> <p>11 Cross-Examination by Mr. Carlin836</p> <p>12 Re-Cross Examination by Mr. Carlin862</p> <p>13 Further ReDirect Examination by Mr. Dobrowski ...864</p> <p>14 Court Reporter's Certificate866</p> <p>15 Examination by Mr. Dobrowski858</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR CLAIMANTS:</p> <p>4 Mr. Paul J. Dobrowski</p> <p>5 Mr. Bruce Kemp</p> <p>6 Mr. Cody Stafford</p> <p>7 Dobrowski, LLP</p> <p>8 4602 Washington Avenue, Suite 300</p> <p>9 Houston, Texas 77007</p> <p>10 Telephone: 713.659.2900</p> <p>11 Fax: 713.659.2908</p> <p>12 E-mail: pdobrowski@doblaw.com</p> <p>13 FOR RESPONDENTS:</p> <p>14 Mr. Steve Carlin</p> <p>15 Mr. Terry R. Weiss</p> <p>16 Ms. Jennifer Tomsen</p> <p>17 Ms. Penelope Brobst Blackwell</p> <p>18 Greenberg Traurig</p> <p>19 The Forum</p> <p>20 3290 Northside Parkway</p> <p>21 Atlanta, Georgia 30327</p> <p>22 Telephone: 678.553.2100</p> <p>23 Fax: 678.553.2212</p> <p>24 E-mail: weissstr@gllaw.com</p> <p>25 FOR JAMES C. KELSO, JR.:</p> <p>26 Mr. Peter J. Anderson</p> <p>27 Sutherland Asbill & Brennan</p> <p>28 999 Peachtree Street, NE</p> <p>29 Atlanta, Georgia 30309-3996</p> <p>30 Telephone: 404.853.8000</p> <p>31 Fax: 404.853.8806</p> <p>32 E-mail: Peter.anderson@sutherland.com</p> <p>33 ALSO PRESENT:</p> <p>34 Mr. Maurice Fallas, Arbitrator</p> <p>35 Mr. Raymond C. Kerr, Arbitrator</p> <p>36 Mr. Thomas A. Marlin, Arbitrator</p> <p>37 Mr. Tom Barnett, Morgan Keegan</p> <p>38 Mr. Don Jones, Claimant</p> <p>39 Mr. Steve Scales, Expert</p> <p>40 Mr. Kjell Ekdahl, Expert</p>	<p>1 MR. KERR: All right. Back on the record,</p> <p>2 please. Good morning, everybody. This is our third</p> <p>3 morning of hearings in the Arispe, et al versus Morgan</p> <p>4 Keegan & Company.</p> <p>5 Is there any housekeeping issue or</p> <p>6 anything that has come up before we start with the</p> <p>7 testimony of the next witness?</p> <p>8 MR. DOBROWSKI: Not as far as we're</p> <p>9 concerned. Mr. Anderson is the personal counsel for</p> <p>10 Mr. Kelsoe.</p> <p>11 MR. ANDERSON: Mr. Chairman, my name is</p> <p>12 Peter Anderson. I'm with the Sutherland firm, and I</p> <p>13 represent Mr. Kelsoe individually.</p> <p>14 MR. KERR: Splendid.</p> <p>15 MR. ANDERSON: Thank you.</p> <p>16 MR. KERR: Happy to have you here.</p> <p>17 So, would you call your next witness,</p> <p>18 please.</p> <p>19 MR. DOBROWSKI: Yes, Claimants call as an</p> <p>20 adverse witness, Mr. James Kelsoe.</p> <p>21 MR. KERR: Mr. Kelsoe, would you raise</p> <p>22 your right hand, please, sir. Do you swear or affirm</p> <p>23 that the testimony you're about to give in this</p> <p>24 proceeding will be the truth, the whole truth and</p> <p>25 nothing but the truth so help you God?</p>

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<p>1 A. Well, that would presume that markets didn't 2 deteriorate further -- 3 Q. Understood. 4 A. -- from March -- but yes. The statement was 5 made in the context of the fact that markets had been 6 very -- credit markets had been very tight, meaning very 7 low yields available for 2005 and 2006. 2006, in 8 particular, the prices were very high on debt 9 securities, meaning the yields that were available were 10 very low and the -- the crack in the market that 11 occurred in the first quarter was meant -- meant to 12 communicate here that those are opportunities that we 13 felt like were -- had not been available for us for 14 several years. 15 Q. And what you and your staff were telling people 16 was that this had created a great buying opportunity, 17 right? 18 A. For us to buy assets for the Fund, yes. 19 Q. But also for the shareholders to buy into the 20 Funds? 21 A. Well, now, I didn't say that here. I don't 22 think that's -- 23 Q. I'm asking you, in this time period, what you 24 were telling -- you and your staff were telling 25 financial advisors and shareholders was that it was a</p>	<p>1 A. Eighty-two? 2 Q. (BY MR. DOBROWSKI) Eighty-two. Who is Courtney 3 Hines? 4 A. Courtney was a young lady who worked for me 5 in -- in our offices and was in charge of marketing and 6 communications. 7 Q. And do you see in this e-mail she's writing 8 about the closed-end high yield funds? 9 MR. WEISS: Can we have some foundation on 10 this document, Mr. Chairman? Because it doesn't appear 11 that he's copied on it or anything. 12 MR. KERR: He said that Courtney Hines 13 works for him. 14 MR. WEISS: No, I understand that, but if 15 he's going to ask any questions about this document, I 16 think that there needs to be some foundation laid. 17 Q. (BY MR. DOBROWSKI) Did Ms. Hines work for you? 18 MR. WEISS: That's fine. 19 A. Yes. 20 Q. (BY MR. DOBROWSKI) All right, sir. And do you 21 see in here that Ms. Hines makes the recommendation it 22 has created a great buying opportunity? 23 MR. ANDERSON: Makes the recommendation? 24 That's not what it says. 25 Q. (BY MR. DOBROWSKI) She says "But either way, it</p>
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<p>1 great opportunity to buy into the Fund, right? 2 A. I don't think that's what -- what's in print 3 here. 4 Q. I understand that, sir. I'm asking you 5 separate from that, in this time frame, the 6 March/April 2007 time frame, you were telling -- you and 7 your staff were telling Morgan Keegan financial advisors 8 and shareholders it was a great buying opportunity to 9 buy into these four closed-end funds, true? 10 MR. WEISS: Mr. Chairman, I think this has 11 been asked and answered now twice. 12 MR. KERR: He hasn't answered it. Sorry. 13 Did you understand the question? 14 THE WITNESS: I think I understand now. 15 The question is separate from what was in print here. 16 It's a separate question. And the question was: Did we 17 recommend people buy -- buy the Funds in March of '07. 18 MR. KERR: Right. 19 A. That is not my recollection that we did so. It 20 was not my method or my -- it was not a practice to 21 recommend to customers to buy or sell. 22 Q. (BY MR. DOBROWSKI) Could you look at 23 Exhibit 82. 24 MR. DOBROWSKI: And we'll be in this -- 25 this volume for a while, Gentlemen.</p>	<p>1 has created a great buying opportunity." 2 Do you see that, sir? 3 A. I do. 4 Q. All right. My question to you is -- is that 5 did you share Ms. Hines' view, that it was a great 6 buying opportunity to buy into the four closed-end funds 7 in March of 2007? 8 MR. ANDERSON: I'm going to have to 9 object, Mr. Chairman, on behalf of my witness. That's 10 not what this document says, and I think it's 11 misleading. 12 MR. KERR: I agree with you. I sustain 13 your objection. What it says is "Either way, it has 14 created a great buying opportunity," but does not 15 necessarily say it's with the Funds. It may be a buying 16 opportunity for the investments. 17 Q. (BY MR. DOBROWSKI) Well, let's look at the 18 bottom e-mail. Matthew Weber, closed-end funds -- 19 MR. FALLAS: Whoa, whoa, whoa, excuse me. 20 Who is Matthew Weber? 21 Q. (BY MR. DOBROWSKI) Who is Matthew Weber? 22 A. I don't know. 23 Q. Okay. Mr. Weber writes to Ms. Hines and asks 24 "Courtney, do you know why there is such weakness in the 25 four closed-end funds?" Right? Do you see that?</p>

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<p style="text-align: right;">Page 625</p> <p>1 A. I do.</p> <p>2 Q. Okay. And she writes back "Jim and I are not</p> <p>3 really sure."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. All right. And she writes "It could be the</p> <p>7 scare in subprime or market volatility across the board,</p> <p>8 but either way, it has created a great buying</p> <p>9 opportunity. The income these Funds generate is as</p> <p>10 solid as ever." Right?</p> <p>11 A. That's what it says, yes.</p> <p>12 Q. All right, sir. And did you share that view?</p> <p>13 A. I don't know where that came from. I didn't</p> <p>14 write that. I didn't make that communication with</p> <p>15 Mrs. Hines nor Mr. Weber.</p> <p>16 MR. KERR: The question is, on March the</p> <p>17 6th, 2007, did you share that view, that it was a great</p> <p>18 buying opportunity for the Funds? It was just a "yes"</p> <p>19 or "no."</p> <p>20 THE WITNESS: I don't know.</p> <p>21 Q. (BY MR. DOBROWSKI) Okay. Could you look at</p> <p>22 Exhibit 83? This is a series -- this is an e-mail</p> <p>23 between Bruce White and Courtney Hines dated March 8,</p> <p>24 2007, and do you see Mr. White is an associate vice</p> <p>25 president with Morgan Keegan & Company?</p>	<p style="text-align: right;">Page 627</p> <p>1 A. Okay.</p> <p>2 Q. I'll represent to you that starting at Line 3,</p> <p>3 that is your testimony -- or your statement -- not</p> <p>4 testimony. Excuse me.</p> <p>5 A. I'm sorry.</p> <p>6 Q. You said at that time on April of 2007 "I was</p> <p>7 involved in purchasing more of the Fund at substantially</p> <p>8 higher prices than we are at today because I still</p> <p>9 believe this is one of the better products to generate a</p> <p>10 10 percent consistent return. So, I do have a belief</p> <p>11 that this would be a good place to get involved,</p> <p>12 although I can't tell you that there is not going to be</p> <p>13 more volatility to the downside or even to the upside,"</p> <p>14 right?</p> <p>15 A. I see it, yes.</p> <p>16 Q. Does that refresh your recollection now, sir,</p> <p>17 that in April of 2007, you were advising Morgan Keegan</p> <p>18 financial analysts and advisors to invest in these</p> <p>19 Morgan Keegan closed-end funds?</p> <p>20 A. I don't dispute that I said that.</p> <p>21 Q. All right, sir.</p> <p>22 A. But I don't recall recommending or advising</p> <p>23 buy-or-sell recommendations to advisors.</p> <p>24 Q. I understand, sir, but you understand this</p> <p>25 conference call was with Morgan Keegan financial</p>
<p style="text-align: right;">Page 626</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And he's talking -- asking Ms. Hines for</p> <p>3 a commentary or talking points about the RMA's</p> <p>4 decreases. Do you see that, sir?</p> <p>5 A. Yes, I see an e-mail from -- from Bruce White</p> <p>6 to Courtney.</p> <p>7 Q. And Ms. Hines writes back "Bruce, there is</p> <p>8 nothing specific that Jim or I can point to that caused</p> <p>9 the selloff at the beginning of the week. It could have</p> <p>10 been the subprime scare or the fact that equities,</p> <p>11 corporates and the asset-backed sector have all been</p> <p>12 down. But the income on these Funds is better now than</p> <p>13 in 2006, earning more than we are paying out at this</p> <p>14 point. If anything, this is a good time to buy."</p> <p>15 Were you talking to your staff,</p> <p>16 specifically Ms. Hines, about whether or not it was a</p> <p>17 good time to buy into these Funds in March of 2007?</p> <p>18 A. No, I don't recall that.</p> <p>19 Q. All right. Could we have Exhibit 93?</p> <p>20 A. I'm at 93, yes.</p> <p>21 Q. Yes, sir. This is a conference call with you</p> <p>22 on April 4 of 2007, right, sir?</p> <p>23 A. Yes.</p> <p>24 Q. And if you look at Page -- may I direct your</p> <p>25 attention to Page 9?</p>	<p style="text-align: right;">Page 628</p> <p>1 advisors, right, sir?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Fair enough. And you made that</p> <p>4 statement, right, sir?</p> <p>5 A. Yes.</p> <p>6 Q. All right. Let's turn to Exhibit 107-A.</p> <p>7 A. 107-A?</p> <p>8 Q. Yes, sir.</p> <p>9 A. Yes.</p> <p>10 Q. And this is a series of e-mails regarding a</p> <p>11 Bloomberg article in July of 2007. Do you remember the</p> <p>12 Bloomberg article, sir? 107-A.</p> <p>13 A. Okay.</p> <p>14 Q. Do you remember this Bloomberg article,</p> <p>15 Mr. Kelsoe?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And in this you acknowledge an</p> <p>18 intoxication similar to what lured many stock fund</p> <p>19 managers in 1999 when the Internet and technology shares</p> <p>20 were headed for a collapse. And the intoxication you</p> <p>21 were talking about was subprime mortgages and</p> <p>22 asset-backed securities, true, sir?</p> <p>23 A. I have been asked about this article on many</p> <p>24 occasions.</p> <p>25 Q. I know you have.</p>

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<p style="text-align: right;">Page 653</p> <p>1 MR. KERR: I thought you said while you</p> <p>2 were running the Fund.</p> <p>3 MR. DOBROWSKI: I'll make it clear.</p> <p>4 Q. (BY MR. DOBROWSKI) As of the end of the time</p> <p>5 you stopped as portfolio manager, sir, what was the</p> <p>6 magnitude of the loss suffered by the Morgan Keegan</p> <p>7 closed-end funds versus their benchmark?</p> <p>8 MR. WEISS: But, again, I think you have</p> <p>9 to have a starting point, too, in order to measure.</p> <p>10 MR. KERR: Yeah, I mean, to calculate the</p> <p>11 loss, you start somewhere.</p> <p>12 MR. WEISS: Are you saying the whole time?</p> <p>13 Q. (BY MR. DOBROWSKI) Compared to the Fund -- in</p> <p>14 July of '08, when you stopped managing the Fund, what</p> <p>15 was the difference between the Morgan Keegan closed-end</p> <p>16 funds' return and the return of the Lehman Brothers?</p> <p>17 MR. FALLAS: From what start date?</p> <p>18 MR. KERR: Was it when each one of them</p> <p>19 was funded?</p> <p>20 MR. DOBROWSKI: No, no. I'm just talking</p> <p>21 about as of that date, at the end of July of 2008, how</p> <p>22 did it stack up against Lehman Brothers. In other</p> <p>23 words, the Lehman Brothers bond fund would have shown a</p> <p>24 return as of July of 2008; and my question is: In their</p> <p>25 comparison to the Fund as of that date, how they</p>	<p style="text-align: right;">Page 655</p> <p>1 what LF98TRUU Index is.</p> <p>2 Q. Assume it's the Lehman Brothers Ba.</p> <p>3 MR. WEISS: I don't think he can --</p> <p>4 A. I can't --</p> <p>5 Q. (BY MR. DOBROWSKI) Well, let me just ask you</p> <p>6 this, Mr. Kelsoe. Is it true that when you left the</p> <p>7 Fund, the Fund management, all four Funds were</p> <p>8 dramatically below the performance of the Lehman</p> <p>9 Brothers Ba Index?</p> <p>10 A. For -- from 2007 forward?</p> <p>11 Q. Uh-huh.</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 A. From 2007 to 2008, yes, we were well below that</p> <p>15 index.</p> <p>16 Q. And if you look -- if the Panel can just look,</p> <p>17 we have the other three Funds' comparison on the next</p> <p>18 three pages behind Exhibit 284. They're called Helios</p> <p>19 Funds now. The Funds are now called Helios Funds, are</p> <p>20 they not, sir?</p> <p>21 A. They were at one time.</p> <p>22 Q. Okay. Fair enough. Let me just ask you a</p> <p>23 couple of other questions so we can wrap this up. In</p> <p>24 fact, one of the strategies you employed was to own</p> <p>25 assets that were not in any index, true?</p>
<p style="text-align: right;">Page 654</p> <p>1 compared.</p> <p>2 MR. FALLAS: You can't calculate a return</p> <p>3 if you don't have a time period. You can't -- if you</p> <p>4 say --</p> <p>5 MR. DOBROWSKI: I understand what you're</p> <p>6 saying.</p> <p>7 MR. FALLAS: If you say we lost</p> <p>8 50 percent, when did you lose the 50 percent?</p> <p>9 Q. (BY MR. DOBROWSKI) Here's my question to you,</p> <p>10 sir. Can you tell us, if you know, what was the</p> <p>11 relationship between the Lehman -- Exhibit 284 -- I'll</p> <p>12 make it easy. Sorry.</p> <p>13 MR. DOBROWSKI: Thank you, Mr. Fallas.</p> <p>14 MR. WEISS: 284?</p> <p>15 MR. DOBROWSKI: Yeah, 284.</p> <p>16 Q. (BY MR. DOBROWSKI) Looking at July 31 of 2008,</p> <p>17 sir, can you tell the Panel what is the difference for</p> <p>18 the Helios Advantage Fund and the Lehman Brothers Index</p> <p>19 as of that date?</p> <p>20 A. No. I mean, I don't know what I'm looking at</p> <p>21 here.</p> <p>22 Q. Well, it's a comparison between the NAV for the</p> <p>23 Helios Advantage Fund and the Lehman Brothers Index.</p> <p>24 A. You're representing that to me, but I can't</p> <p>25 verify that that's what that is. I mean, I don't know</p>	<p style="text-align: right;">Page 656</p> <p>1 A. Yes.</p> <p>2 Q. And you wanted to purchase assets in categories</p> <p>3 that are not efficiently traded and especially not in an</p> <p>4 index, right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And the Lehman Brothers Index is a bond</p> <p>7 index, is it not?</p> <p>8 A. I'm sorry. The --</p> <p>9 Q. Lehman Brothers Ba High Yield Index is a bond</p> <p>10 index, is it not?</p> <p>11 A. It's a subset of a Lehman High Yield Index,</p> <p>12 yes.</p> <p>13 Q. And you believe that the Lehman Brothers High</p> <p>14 Yield Bond Index was an appropriate benchmark for the</p> <p>15 four closed-end funds, did you not?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Sir, let me just visit with you about</p> <p>18 one last topic. Do you recall in late 2007, early 2008,</p> <p>19 the banks that held lines of credit for the four Funds</p> <p>20 had called the lines of credit?</p> <p>21 A. Do I recall that in late 2007 --</p> <p>22 Q. Early 2008, in that -- around that time frame,</p> <p>23 that the banks had called the lines of credit for the</p> <p>24 four closed-end funds?</p> <p>25 A. To be more specific, we did have in 2007, what</p>

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<p>1 volume was lower. That's color.</p> <p>2 So, if you come back to these securities,</p> <p>3 color would help you gauge the willingness of market</p> <p>4 participants to make markets or to get new issue done.</p> <p>5 Typically -- I tell you, that question really can go to</p> <p>6 new issue as much as anything. Is the market</p> <p>7 functioning? Today, for instance, one of the real</p> <p>8 problems we have is there is no ability to issue bonds</p> <p>9 in the asset-backed or mortgage-backed arena. So, the</p> <p>10 market color is -- it's black, meaning it's very</p> <p>11 negative. There's no ability to create any new issue</p> <p>12 and move bonds. So, it's very depressed, if you will,</p> <p>13 color. There's still no new issuance.</p> <p>14 Now, in '07, the first half of '07, bonds</p> <p>15 were still moving. You were still getting various</p> <p>16 dealers bringing new issues to market. And, so, there</p> <p>17 was some color that was able to flavor, if you will, the</p> <p>18 pricing of assets during that period of time. That</p> <p>19 began to erode as the year wore on and certainly by the</p> <p>20 time you take Bear Stearns out and then you take the</p> <p>21 banks out and you get these ratings' actions going on</p> <p>22 toward the end of the year, the market color continues</p> <p>23 to trade down, if you will, the color is negative.</p> <p>24 MR. MARTIN: Thank you.</p> <p>25 THE WITNESS: Does that help?</p>	<p>1 MR. FALLAS: And is there any way -- and</p> <p>2 this is basically just a more detailed version of</p> <p>3 questioning you were asked just a little while ago. You</p> <p>4 said before that you could not know just by looking at</p> <p>5 that where that was in the credit stack, correct?</p> <p>6 THE WITNESS: Yes, I did.</p> <p>7 MR. FALLAS: You have to look at the trust</p> <p>8 indenture.</p> <p>9 THE WITNESS: Well, you know it's not A.</p> <p>10 You know it's not B. I'm going to assume -- if I were</p> <p>11 looking at this, I would assume there is an M1 through</p> <p>12 M10 in front of it, but I don't know what's behind it.</p> <p>13 There may be M15 and then B1 through B6 behind it or, as</p> <p>14 counsel suggested, it might be just B1, 2 and 3 behind</p> <p>15 it. You would have to have a sizable document to</p> <p>16 determine exactly where it is in that.</p> <p>17 MR. FALLAS: Okay. But is there any kind</p> <p>18 of -- do they -- do they do -- is there a haphazard way</p> <p>19 that they number these or, like, if you see a M11, could</p> <p>20 that ever be the top?</p> <p>21 THE WITNESS: No. I don't -- no.</p> <p>22 MR. FALLAS: Would they ever start at,</p> <p>23 like, J and end with J, K, L, M?</p> <p>24 THE WITNESS: No.</p> <p>25 MR. FALLAS: So, they would usually start</p>
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<p>1 MR. MARTIN: It helps, thank you.</p> <p>2 MR. KERR: All right, sir. You had some</p> <p>3 questions.</p> <p>4 MR. FALLAS: Going back to that, can you</p> <p>5 turn around? Thank you. You were asked several</p> <p>6 different times about the description of the securities</p> <p>7 and, you know, I'm looking in the middle there, it says</p> <p>8 Ace Securities 2004-HE3M11. You said that does tell you</p> <p>9 exactly what tranche it is; is that correct?</p> <p>10 THE WITNESS: Yes.</p> <p>11 MR. FALLAS: So, it doesn't just say --</p> <p>12 that description with the years and the numbers and</p> <p>13 everything, that's not -- that's not simply the overall</p> <p>14 trust of the structured security. That's actually the</p> <p>15 specific tranche. That's a unique --</p> <p>16 THE WITNESS: Yes.</p> <p>17 MR. FALLAS: -- code for that specific</p> <p>18 tranche?</p> <p>19 THE WITNESS: As a matter of fact, on that</p> <p>20 particular one, if I go to Bloomberg, I can type in Ace,</p> <p>21 because I know the ticker symbols I type in Ace 04-HE3</p> <p>22 M11, I will get a specific -- something will pop up.</p> <p>23 MR. FALLAS: But that's a full description</p> <p>24 of an individual tranche, right?</p> <p>25 THE WITNESS: Yes.</p>	<p>1 at A.</p> <p>2 THE WITNESS: Yes. A is always -- to my</p> <p>3 knowledge, and, again, I might be checked on this, but,</p> <p>4 to my knowledge, the senior classes are going to be</p> <p>5 denoted with an A.</p> <p>6 MR. FALLAS: Okay. So, while you could</p> <p>7 not -- you couldn't tell for sure whether it was, like,</p> <p>8 you know, second from the bottom or tenth from the</p> <p>9 bottom, you could tell that it was somewhere in the</p> <p>10 middle somewhere.</p> <p>11 THE WITNESS: Yeah, it's not at the top.</p> <p>12 MR. FALLAS: Okay. That was that</p> <p>13 question. And then back to Tab 61.</p> <p>14 THE WITNESS: Which book?</p> <p>15 MR. FALLAS: That black one. Yeah, that</p> <p>16 one. Tab 61.</p> <p>17 THE WITNESS: Okay. Tab 61. I'm there.</p> <p>18 MR. FALLAS: Okay. The back side of the</p> <p>19 first page.</p> <p>20 THE WITNESS: Okay.</p> <p>21 MR. FALLAS: Page 2, I guess.</p> <p>22 THE WITNESS: Yes.</p> <p>23 MR. FALLAS: At the bottom where the</p> <p>24 question is "Do you tend to invest in the lower level</p> <p>25 higher risk tranches of Morgan securities?" We had an</p>

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<p>1 expert witness yesterday who -- who, if I remember 2 correctly, had an analysis that said that at some point 3 in most of these Funds a big chunk was in the lower 4 tranches. Like I remember a number of close to 5 90 percent in some cases. Does that sound even 6 potentially that it was ever --</p> <p>7 THE WITNESS: Well, now, I think that 8 question has got to be -- 90 percent of the Fund was not 9 in asset-backed or mortgage-backed securities, period. 10 Okay. So, 90 percent of the Fund couldn't have been in 11 the lower tranches. But if you take out that allocation 12 and say, well, there was, you know, somewhere around 13 two-thirds of the Fund was in asset backed or structured 14 finance product, then I would say it is probable that 15 90 percent was, in fact, in lower tranches. Counsel 16 refers to the lowest tranche, which is, meaning the very 17 bottom piece or the equity or residual piece, not 18 90 percent there, but if you take, you know, from the 19 mezzanine, you know, the middle to the bottom, yeah, I 20 would say, yeah, it was very probable that we owned -- a 21 very high majority of our holdings would have been on 22 purpose not in the senior pieces.</p> <p>23 MR. FALLAS: So, to the extent that you -- 24 to the extent of the structured securities in the 25 portfolio, to the extent of that -- the structured</p>	<p>1 levels, that it's possible to -- before the entire trust 2 evolves, there are those lower pieces that basically 3 stop paying altogether and are essentially no good 4 anymore, worth pennies, and even though they may have a 5 nominal value, they essentially -- they've just gone 6 away. They've sort of, you know, stopped -- stopped 7 being meaningful. Is that even in the ballpark of the 8 way it works?</p> <p>9 THE WITNESS: Well, yes, I think that, 10 generally speaking, that whenever you're looking at the 11 more subordinated pieces of a capital structure, you 12 certainly expect more risk at the bottom, right? And, 13 so, for example, let me give you an example. Take -- 14 pick a bank of any sort, you know, name XYZ Bank, okay? 15 The very top of that capital structure is a certificate 16 of deposit. It has a government guarantee on it, for 17 that matter, right? But it has very low return, okay, 18 1 percent, maybe a half a percent. As you step down, 19 you could buy the senior debt of the bank operating 20 company. That would be secured by, you know, as you 21 step further down, you get subordinated debt and then 22 preferred stock and then common stock. The common stock 23 of a bank would be the first thing to stop paying in 24 stress, and we saw that, in fact, happen. So, the banks 25 discontinue their dividends, right? British Petroleum.</p>
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<p>1 securities were contained in the portfolios, of those 2 you basically -- you tended to favor the lower tranches 3 for the structured part.</p> <p>4 THE WITNESS: Yeah, we didn't purchase -- 5 in fact, if I might elaborate on that, again, we're 6 talking about high yield funds. So, a senior bond 7 pricing at LIBOR plus 19 basis points, that doesn't fit. 8 So, we're going to be down the credit structure. Now, 9 we did own some pieces that were the seniormost pieces; 10 but they were from old deals that were distressed. So, 11 in fact, we owned some aircraft and credit card and 12 medical equipment receivables that were, at the time 13 that those bonds were issued in the late '90s or early 14 2000s, those were the senior pieces, but because the 15 deals themselves had gone through a great deal of 16 stress, we were able to buy those at cents on the 17 dollar. One that comes up in particular is aircraft 18 receivables. You know, after 9/11, those deals all went 19 through enormous stress and we owned the A tranches, 20 they would have been denoted as an A tranche, but they 21 were at 50 to 60 cents on the dollar. Again, they're 22 high yield situations.</p> <p>23 MR. FALLAS: And it was also kind of 24 explained to us that in -- particularly in the lower 25 tranches and, you know -- you know, some of the lowest</p>	<p>1 It didn't quit paying their bonds, but it quit paying 2 its common stock.</p> <p>3 So, the supposition that the more junior 4 pieces of a structure are subject to having the cash 5 flows interrupted first is true, yes.</p> <p>6 MR. FALLAS: Okay. So, what was told to 7 us is, basically, if you're investing in, let's say the 8 third-to-the-bottom tranche, if -- if that particular 9 issue gets in trouble, then chances are very good that 10 you basically could lose your entire investment in that 11 since you had that third-to-the-last tranche, your 12 entire investment could be wiped out with a good chance. 13 Is that --</p> <p>14 THE WITNESS: Well, in 2010, saying it's a 15 good chance is easy to say. There are -- over the time 16 that I've invested period of time, there are times when 17 a deal is stressed and then it recovers. Case in point 18 is manufactured housing. You know, mobile homes. 19 Stress, recover; bonds recover. So, it's not a 20 certainty that it's going to go one way or the other, 21 but it does have -- now, somewhat complicated, but the 22 very bottom pieces of -- or the bottom tranches of 23 structures are not necessarily and always more risky 24 than higher tranches. We are seeing that today whenever 25 we look at a deal that was structured back in '07 or</p>

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<p>1 '06, the cash flows are allowed to flow all the way 2 through to the bottom and you've got a much higher 3 dividend or a much higher coupon at the bottom, but 4 whenever the deal begins to erode in value, the bonds 5 are affected all the way up and those bonds that came 6 out with, say, a very, very low coupon ultimately, you 7 know, whenever the deal collapses itself, there is more 8 cash flow that went through to the bottom than was to 9 the middle, does that make sense, because of the coupon.</p> <p>10 MR. FALLAS: Yeah, but there seemed to be 11 a very big point made about the fact that, if you 12 understand how these things work, if you -- if you go in 13 and you buy, you know, the bottom tranche or, you know, 14 third to the bottom, that you have to go in knowing that 15 it's not -- it doesn't have to be a 100-year flood event 16 for you to lose your entire stake being in that tranche; 17 whereas, if you -- if you were in the top, you know, 18 sure, you could lose all your money in that just as 19 well, but that's the -- you know, that's not a -- that's 20 not a very common scenario.</p> <p>21 THE WITNESS: So, if the question is -- is 22 there more risk of loss in the subordinate bonds at the 23 bottom than at the -- then, yes, that is certainly the 24 case.</p> <p>25 MR. FALLAS: And my question really is:</p>	<p>1 MR. FALLAS: I'm just trying to get to one 2 concept. I'm trying to think of the best way to ask it.</p> <p>3 THE WITNESS: Could I finish?</p> <p>4 MR. KERR: Yeah, go ahead.</p> <p>5 THE WITNESS: I was going to say that 6 those bonds, those First Plus bonds paid off at par. 7 Okay. Now, as we come to 2010, we look back at -- we 8 could pick any one of those up there probably for the 9 most part -- well, not the '04, but maybe the -- if 10 there was an '05 or an '06 deal, I'm sure that that bond 11 is probably worthless at this point.</p> <p>12 So, it really is more a question of, if 13 you're in a good economic environment and the 14 underwriting for loans has been good and you have some 15 appreciation in real estate, then those bottom bonds are 16 going to work. If you go through a situation that 17 happened in 2007 to 2010, those bottom bonds aren't 18 going to work.</p> <p>19 MR. KERR: Depends on market conditions.</p> <p>20 THE WITNESS: That's it. One more thing. 21 I want to say one more thing.</p> <p>22 MR. FALLAS: That's all right.</p> <p>23 THE WITNESS: One more thing.</p> <p>24 MR. FALLAS: That's more than I wanted to 25 know.</p>
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<p>1 Is it a -- is it a nonunusual event?</p> <p>2 THE WITNESS: Is it a foregone 3 conclusion --</p> <p>4 MR. FALLAS: No, no, no. Is it not so 5 usual if a tranche that you were invested in in one of 6 the lower levels is wiped out or, you know, basically it 7 becomes almost worthless? Is that --</p> <p>8 THE WITNESS: Well, that discussion in the 9 context of 2010 is an interesting question. I remember 10 in 2001 and '2, 2001, 2002, some of our biggest 11 performance -- our best performance came from the 12 residuals of CMOs, mortgages. We bought the equity of 13 what we called the residual of CMO deals, which is a 14 pool of mortgages. We bought the equity. We paid 25 to 15 30 cents on the dollar for those residual pieces. They 16 paid off at par. Okay? I bought the BB, which is the 17 very bottom piece of First Plus and Master's Financial 18 125 home equity loans back from the late '90s.</p> <p>19 MR. DOBROWSKI: Mr. Chair, I think the 20 question was directed towards what he actually had done 21 in the Funds, not something that he's done in 2010. And 22 now we're getting into expert testimony, and he wasn't 23 designated as an expert. I'm certainly happy to have 24 him answer all of Mr. Fallas' questions. I just think 25 that the witness didn't understand.</p>	<p>1 THE WITNESS: The same thing is true of 2 corporate debt. You know, in 2001, 2002, gone.</p> <p>3 MR. FALLAS: Okay. Let me try to put it 4 in a different way. The Dow Jones 30, it's 30 stocks, 5 right? They're chosen by Dow Jones company, and they 6 have to meet criteria to be one of the 30, right? And 7 they're pretty heavy criteria. They're some of the most 8 solid companies there are at the time they're included.</p> <p>9 THE WITNESS: Okay. I'll go along with 10 you, but I don't know what the criteria is.</p> <p>11 MR. FALLAS: Okay. All right. Well, I'll 12 stipulate it's stated, you know, I mean, it's basically 13 widely known, as far as I know, that they're some of the 14 most solid corporations there are and that's -- that's 15 the brand. But if -- if one of the companies that's 16 currently in the Dow Jones today were to basically go 17 bankrupt and, you know, be worth, you know, 2 cents --</p> <p>18 THE WITNESS: Like General Motors.</p> <p>19 MR. FALLAS: Right. It does happen 20 sometimes, but it's very unusual and it's very 21 surprising when it does happen, okay? That's -- that's 22 my point. Would you -- would you concur with that?</p> <p>23 THE WITNESS: Okay. Yes.</p> <p>24 MR. FALLAS: It doesn't happen every day, 25 but it does happen sometimes.</p>

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<p>1 THE WITNESS: Right, right.</p> <p>2 MR. FALLAS: All right. Now, on the other</p> <p>3 hand, you could have a Microsoft call, okay? Microsoft</p> <p>4 is somewhere around \$24 now. Let's say you had a 25</p> <p>5 call expiring in December of this year, okay? In</p> <p>6 December, if -- if Microsoft is \$30, that call will be</p> <p>7 worth \$5, right? If, in December, Microsoft is below</p> <p>8 \$25, that call will expire worthless, correct?</p> <p>9 THE WITNESS: Correct.</p> <p>10 MR. FALLAS: And, so, my point is, that</p> <p>11 options, you know, they're going to be worth what</p> <p>12 they're worth, you know, depending on how they perform,</p> <p>13 but when options expire worthless, it's a very common</p> <p>14 occurrence and, you know, if somebody had a portfolio of</p> <p>15 different long options, you know, they'll have some that</p> <p>16 really pay off and some of them, you know, that expire</p> <p>17 worthless and they expect that. Now, depending on how</p> <p>18 they net out, you know, that whole portfolio will either</p> <p>19 make money or lose money. But if you had, you know, 50</p> <p>20 different options and -- and 40 -- you know, 17 of them</p> <p>21 expired worthless, you're not -- you're not surprised</p> <p>22 that those 17 expired worthless because you understand</p> <p>23 that they're very -- you know, they're very volatile and</p> <p>24 they do have extreme potential to -- to be worth zero,</p> <p>25 right?</p>	<p>1 you tell me, what would be a typical price that you</p> <p>2 would pay for a lower tranche? Be 50 or be 70 or what</p> <p>3 was --</p> <p>4 THE WITNESS: It could be any variety of</p> <p>5 numbers.</p> <p>6 MR. FALLAS: Let's say you paid 50.</p> <p>7 THE WITNESS: Fifty-cents on the dollar.</p> <p>8 MR. FALLAS: Yeah. And it paid you, you</p> <p>9 know, regular coupons and it had -- you paid 50 and you</p> <p>10 had taken back in 20.</p> <p>11 THE WITNESS: Twenty points of coupon.</p> <p>12 MR. FALLAS: Right. Would it shock you</p> <p>13 ever to -- I mean, you have received some return there.</p> <p>14 So, even if -- would it shock you if that -- at some</p> <p>15 point it went from 50 down to 40 one month and then the</p> <p>16 next month it went to 5?</p> <p>17 THE WITNESS: No, not necessarily. I</p> <p>18 mean, it could.</p> <p>19 MR. FALLAS: Okay. I think I understand.</p> <p>20 I just have one other question and it's -- are you on</p> <p>21 Tab 61?</p> <p>22 THE WITNESS: Yes.</p> <p>23 MR. FALLAS: Okay. That second page at</p> <p>24 the bottom. The question was "Do you tend to invest in</p> <p>25 the lower level, higher risk tranches of mortgage</p>
Page 786	Page 788
<p>1 THE WITNESS: Okay. I'm listening.</p> <p>2 MR. FALLAS: So, what I'm trying to get at</p> <p>3 is, as an investor in the lower tranches, is it -- is it</p> <p>4 shocking whenever you get a report that one has</p> <p>5 basically, you know, lost pretty much all of its value</p> <p>6 or is that, like, the General Motors stock that, you</p> <p>7 know --</p> <p>8 THE WITNESS: Well, I think it's -- I</p> <p>9 think it's two different things altogether. Because</p> <p>10 when you put the money in an option, if you put a</p> <p>11 hundred dollars in the option, it's a 0 or a 1. In</p> <p>12 other words, it has a payoff or it doesn't. When we</p> <p>13 buy the bonds that we're buying here, there's a cash</p> <p>14 flow associated with them. So, it's paying coupons</p> <p>15 monthly. So, it's -- you know, there are many of them</p> <p>16 that lost a lot of value, but a lot of them actually</p> <p>17 paid a lot of cash back. So, it's not the same sort of</p> <p>18 comparison. And, yes, I would be shocked to have a zero</p> <p>19 return on a bond or, you know, to have a negative 100</p> <p>20 percent return on a bond. I would be -- I expect to</p> <p>21 have cash flows coming into the portfolio.</p> <p>22 MR. FALLAS: Okay. Well, would you be</p> <p>23 shocked -- okay. I think you brought up something good.</p> <p>24 Would you be shocked if you had, you know, a lower</p> <p>25 tranche which had paid -- you know, let's say -- you --</p>	<p>1 securities?"</p> <p>2 And it seems like the first part of the</p> <p>3 paragraph it's just explaining what structures and</p> <p>4 investments are and what the difference is between</p> <p>5 higher and lower. The answer to the question really is</p> <p>6 at the very last sentence. "As far as our selection</p> <p>7 process, the amount of risk we are willing to take</p> <p>8 depends upon our view of the collateral. If we are</p> <p>9 confident in the collateral, then we'd be more</p> <p>10 comfortable going further down."</p> <p>11 Essentially, the way I interpret that is</p> <p>12 basically you say that we do -- we do buy the lower</p> <p>13 tranches sometimes. It depends on whether we like them</p> <p>14 or not.</p> <p>15 THE WITNESS: Yes.</p> <p>16 MR. FALLAS: They ask you "Do you tend to</p> <p>17 invest in the lower levels" and your answer is, it seems</p> <p>18 to me, it depends. And I guess my question is: If --</p> <p>19 if you tended to favor those because they enabled you to</p> <p>20 get the higher income, which was kind of your objective,</p> <p>21 why wasn't that answer more, you know, straightforward?</p> <p>22 THE WITNESS: Well, I can tell you that</p> <p>23 that was -- I attempted to give a straightforward</p> <p>24 answer. We -- these were high yield funds. These were</p> <p>25 not investment-grade funds. So, I -- I laid out the</p>

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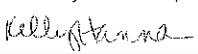
<p style="text-align: right;">Page 861</p> <p>1 Q. Okay. And if you look behind 73-A, which is</p> <p>2 the December 2006 policy and procedure manual and go to</p> <p>3 Exhibit L, you will see the valuation procedures, right,</p> <p>4 sir?</p> <p>5 A. In each tab?</p> <p>6 MR. KERR: Just A.</p> <p>7 Q. (BY MR. DOBROWSKI) Just A. Just looking at A.</p> <p>8 I'm going to try and make this simple.</p> <p>9 A. Good.</p> <p>10 Q. Okay. You're at 73-A?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And the policies and procedures, Exhibit L, are</p> <p>13 on the last four pages of that document, right, sir?</p> <p>14 A. Yes.</p> <p>15 Q. All right. And if you go to 73-E, which are</p> <p>16 the July 2007 policies and procedures, you will see the</p> <p>17 last four pages are the valuation procedures, and you</p> <p>18 can count them. One, 2, 3, 4. The last four pages,</p> <p>19 right, sir?</p> <p>20 A. Yes, sir.</p> <p>21 Q. All right. And then if you go to G, 73-G,</p> <p>22 which are the September 2007 procedures, you will see</p> <p>23 Exhibit L, the valuation procedures are one, two, three,</p> <p>24 four, five pages long, right, sir?</p> <p>25 A. Agree.</p>	<p style="text-align: right;">Page 863</p> <p>1 THE WITNESS: To me, in my experience,</p> <p>2 whenever you changed accountants, you know, like if we</p> <p>3 changed from KPMG to PWC, PWC would have to ask KPMG if</p> <p>4 they could use their information in the future filings</p> <p>5 from past years that they did an audit and oftentimes or</p> <p>6 at least in my experience sometimes accountants can</p> <p>7 refuse to let you do that and say, look, I have no</p> <p>8 relationship with you going forward. You need to get</p> <p>9 your own people to do the audit and finish it. And</p> <p>10 that's how I viewed that letter, that they just didn't</p> <p>11 want them to use their data because they had no</p> <p>12 continuing relationship with Hyperion or anything about</p> <p>13 those Funds.</p> <p>14 MR. FALLAS: Would you say it's more --</p> <p>15 it's more of a standpoint of release of liability or</p> <p>16 from the standpoint of, well, you're no longer our</p> <p>17 client, so we don't want to be nice to you?</p> <p>18 THE WITNESS: Both. I don't think you</p> <p>19 want any liability associated with a future client's</p> <p>20 purchases -- I mean, the non-client's future purchases,</p> <p>21 if I'm saying that right.</p> <p>22 MR. FALLAS: But it doesn't mean that the</p> <p>23 opinion was basically withdrawn or invalidated?</p> <p>24 THE WITNESS: I believe they stand by</p> <p>25 their opinion to this day.</p>
<p style="text-align: right;">Page 862</p> <p>1 Q. Okay. And, in fact, the prior procedures were</p> <p>2 actually only three-and-a-half pages long, right?</p> <p>3 A. That sounds good to me.</p> <p>4 Q. Okay.</p> <p>5 MR. DOBROWSKI: I'll pass the witness.</p> <p>6 MR. KERR: Fair enough. Anything further?</p> <p>7 MR. CARLIN: Just one question, Mr. Chair.</p> <p>8 RECROSS-EXAMINATION</p> <p>9 Q. (BY MR. CARLIN) You were shown Exhibit 285,</p> <p>10 that PWC letter?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Is that a qualification of an opinion, in your</p> <p>13 experience and expertise as an auditor/CPA?</p> <p>14 A. It is not.</p> <p>15 Q. Is it a withdrawal of an opinion?</p> <p>16 A. It is not.</p> <p>17 MR. CARLIN: Nothing further.</p> <p>18 MR. KERR: Anything further?</p> <p>19 MR. DOBROWSKI: No.</p> <p>20 MR. KERR: Do you have anything?</p> <p>21 MR. MARTIN: No questions.</p> <p>22 MR. KERR: Do you have anything?</p> <p>23 MR. FALLAS: Just one. To that last</p> <p>24 question, how would you characterize it? What would you</p> <p>25 call it?</p>	<p style="text-align: right;">Page 864</p> <p>1 MR. DOBROWSKI: Can I ask just one</p> <p>2 question just to follow up on that?</p> <p>3 MR. KERR: Okay.</p> <p>4 FURTHER REDIRECT EXAMINATION</p> <p>5 Q. (BY MR. DOBROWSKI) Other than the fact that</p> <p>6 they say specifically you can't rely on the opinions,</p> <p>7 right, sir?</p> <p>8 MR. CARLIN: Objection. The document</p> <p>9 speaks for itself.</p> <p>10 Q. (BY MR. DOBROWSKI) True? That's what it says.</p> <p>11 A. I believe they stand by their opinion.</p> <p>12 Q. The document says you cannot rely on their</p> <p>13 financial statements for those years?</p> <p>14 MR. FALLAS: It says should not be relied</p> <p>15 upon.</p> <p>16 Q. (BY MR. DOBROWSKI) Okay. Fine. That you</p> <p>17 should not rely upon them for those years, true, sir?</p> <p>18 That's what PWC says.</p> <p>19 MR. KERR: That's the question. Isn't</p> <p>20 that what that document says?</p> <p>21 THE WITNESS: That is what the document</p> <p>22 says, but I think you have to look at what is that</p> <p>23 document used for. And it's all related to future</p> <p>24 purchases.</p> <p>25 MR. KERR: Okay.</p>

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1 MR. DOBROWSKI: Thank you, sir.
2 MR. KERR: All right.
3 Q. (BY MR. DOBROWSKI) Is that qualification in the
4 document --
5 MR. DOBROWSKI: The document -- you can
6 read it. You can read it. Let's not waste his time.
7 MR. KERR: We have read it.
8 MR. DOBROWSKI: Yes.
9 MR. KERR: All right. This hearing is
10 adjourned for today. Thank you very much.
11 (Proceedings recessed at 6:44 p.m.)
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1 STATE OF TEXAS
2 COUNTY OF HARRIS
3
4 REPORTER'S CERTIFICATE
5 ARBITRATION HEARING
6 October 14, 2010
7
8 I, the undersigned Certified Shorthand Reporter in
9 and for the State of Texas, certify that the facts
10 stated in the foregoing pages are true and correct.
11 I further certify that I am neither attorney or
12 counsel for, related to, nor employed by any parties to
13 the action in which this testimony is taken and,
14 further, that I am not a relative or employee of any
15 counsel employed by the parties hereto or financially
16 interested in the action.
17 SUBSCRIBED AND SWORN TO under my hand and seal of
18 office on this the 25th day of October, 2010.
19  Digitally signed by Kelly Hanna
20 Date: 2010.10.25 09:40:40 -07:00
Reason: I am the author of this document
Location: Houston, TX
21 Kelly Hanna, CSR, RPR, CRR, CMRS
22 Texas CSR 1654
23 Expiration: 12/31/2011
24 Firm Registration No. 581
25 1225 North Loop West, Suite 327
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16 Day 4	19
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18 above-styled and numbered cause on the 15th day of	21
19 October, 2010, from 9:10 a.m. to 4:54 p.m., before Kelly	22
20 Hanna, Certified Shorthand Reporter in and for the State	23
21 of Texas, reported by computerized stenotype machine at	24
22 the offices of Greenberg Traurig, 1000 Louisiana, Suite	25
23 1700, Houston, Texas, pursuant to the Federal Rules of	
24 Civil Procedure and the provisions stated on the record	
25 or attached hereto.	
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1 APPEARANCES	1 MR. KERR: Good morning, everybody. This
2	2 is the fourth, evidently not the last day of hearings in
3 FOR CLAIMANTS:	3 the Arispe versus Morgan Keegan case. We have Mr. Stein
4 Mr. Paul J. Dobrowski	4 back in the dock.
5 Mr. Bruce Kemp	5 Mr. Stein, I remind you, you're under
6 Mr. Cody Stafford	6 oath.
7 Dobrowski, LLP	7 THE WITNESS: Yes.
8 4602 Washington Avenue, Suite 300	8 MR. KERR: We will pick up the
9 Houston, Texas 77007	9 cross-examination with Mr. Carlin. So, you're up.
10 Telephone: 713.659.2900	10 MR. DOBROWSKI: Mr. Chair, a couple of
11 Fax: 713.659.2908	11 housekeeping matters, very briefly.
12 E-mail: pdobrowski@doblaw.com	12 MR. STAFFORD: Just so the Panel is aware,
13 FOR RESPONDENTS:	13 we have updated your binders, as we promised before,
14 Mr. Steve Carlin	14 with the updated damage calculation with the
15 Ms. Jennifer Tomsen	15 out-of-pocket losses on there. That would be 291-A in
16 Ms. Penelope Brobst Blackwell	16 your last binder. We've also tried to put in the other
17 Greenberg Traurig	17 exhibits that have come in that were not pre-done. And
18 The Forum	18 then also you will find, as promised again, from
19 3290 Northside Parkway	19 Dr. McCann in Exhibit 296, it is the 35 nonRMK high
20 Atlanta, Georgia 30327	20 yield closed-end funds and we have attached to that the
21 Telephone: 678.553.2100	21 slide from his presentation that address that as well.
22 Fax: 678.553.2212	22 MR. KERR: Okay. Thank you.
23 E-mail: weisstr@gtlaw.com	23 MR. STAFFORD: We are making that
24 ALSO PRESENT:	24 available to respondents as well.
25	25 MR. KERR: So, did you put that in the

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<p style="text-align: right;">Page 875</p> <p>1 seven years.</p> <p>2 Q. Okay. Because some of it would be shorter</p> <p>3 term, things like the three and six and nine months?</p> <p>4 A. That's correct.</p> <p>5 Q. And then some of them spread out. So, kind of</p> <p>6 the zero to ten-year time frame, right?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. Now, you spent a fair amount of time</p> <p>9 talking with Mr. Kemp about -- and with me -- about the</p> <p>10 Hyperion conference call. Do you recall that?</p> <p>11 A. That's correct.</p> <p>12 Q. Now, you previously testified, sir, though,</p> <p>13 just to be clear, that during that call, Hyperion did</p> <p>14 not tell you that Morgan Keegan or Mr. Kelsoe had done</p> <p>15 anything wrong, correct?</p> <p>16 A. That's correct. They didn't come right out and</p> <p>17 say they mismanaged. They did say they had to make</p> <p>18 drastic or they had to make major changes to the -- to</p> <p>19 the portfolio because of the investment characteristics</p> <p>20 of the existing portfolio.</p> <p>21 Q. Right. And from that you had -- or you started</p> <p>22 at least to come to the conclusion that there -- there</p> <p>23 had been something wrong with the prior management,</p> <p>24 right?</p> <p>25 A. That's -- that's correct.</p>	<p style="text-align: right;">Page 877</p> <p>1 MR. CARLIN: Bruce, I'm looking for --</p> <p>2 MR. KEMP: The transcript?</p> <p>3 MR. CARLIN: No. I believe that's 206,</p> <p>4 right?</p> <p>5 MR. KEMP: 226.</p> <p>6 Q. (BY MR. CARLIN) And if you take a look at</p> <p>7 Claimants' Exhibit 226, and that's that transcript,</p> <p>8 right?</p> <p>9 A. Yes, it is.</p> <p>10 MR. FALLAS: Exhibit what?</p> <p>11 MR. DOBROWSKI: Claimants' 226.</p> <p>12 MR. KEMP: Steve, do you need us to put it</p> <p>13 up on the screen for you?</p> <p>14 MR. CARLIN: No, not at the moment. I</p> <p>15 sent Tom back in to get my version of these that I have</p> <p>16 some tabs on. I just didn't have -- with the Panel's</p> <p>17 indulgence, I'm just getting my version so we can move</p> <p>18 through it a little more quickly.</p> <p>19 MR. KEMP: I've got one with tabs.</p> <p>20 MR. CARLIN: No, I've got 226. I've just</p> <p>21 got to mark up -- because there's only a few spots that</p> <p>22 I wanted to mention to him.</p> <p>23 MR. KERR: He's got his tabs.</p> <p>24 MR. CARLIN: I've got my tabs.</p> <p>25 MR. KEMP: Trying to help.</p>
<p style="text-align: right;">Page 876</p> <p>1 Q. Right.</p> <p>2 A. Because they had reduced the -- the dividend</p> <p>3 from -- overnight from 8 or 9 cents a share to 1 cent a</p> <p>4 share.</p> <p>5 Q. And that was Hyperion?</p> <p>6 MR. FALLAS: Excuse me. Could you please</p> <p>7 read back the question.</p> <p>8 (The record was read as requested.)</p> <p>9 MR. FALLAS: And when you said "And from</p> <p>10 that" you were referring to the fact that there was a</p> <p>11 new manager?</p> <p>12 MR. CARLIN: Not exactly. What I was just</p> <p>13 trying to get at was --</p> <p>14 Q. (BY MR. CARLIN) Hyperion didn't tell you in</p> <p>15 that call that Morgan Keegan or Kelsoe did anything</p> <p>16 wrong, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. Okay. But from what you heard in the call, you</p> <p>19 concluded that something must have been wrong because of</p> <p>20 the dividend reduction and because of the net asset</p> <p>21 value drop, correct?</p> <p>22 A. That's correct.</p> <p>23 MR. CARLIN: Does that answer your</p> <p>24 question, Mr. Fallas?</p> <p>25 MR. FALLAS: Thank you.</p>	<p style="text-align: right;">Page 878</p> <p>1 MR. CARLIN: I've got the stuff I want him</p> <p>2 to focus on, okay?</p> <p>3 THE WITNESS: I'm starting to see how it</p> <p>4 works.</p> <p>5 MR. CARLIN: Mr. Chair, if I could step</p> <p>6 out for a minute. I'm looking for my binder with the</p> <p>7 tabs, and for some reason it's not in the stack.</p> <p>8 (Recess taken from 9:20 to 9:21.)</p> <p>9 MR. CARLIN: Mr. Chair, I'll go ahead and</p> <p>10 proceed. For some reason, my copy is not here.</p> <p>11 MR. DOBROWSKI: Do you need an extra copy?</p> <p>12 MR. CARLIN: No. I've got a copy. What I</p> <p>13 don't have is my copy that is marked and tabbed with</p> <p>14 some of the things that I wanted to ask Mr. Stein about,</p> <p>15 but I'm going to go ahead and proceed.</p> <p>16 Q. (BY MR. CARLIN) Mr. Stein, would you please</p> <p>17 turn to Page 2 of Exhibit 226; and this is the</p> <p>18 conference call, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. The transcript. Now, you were asked some</p> <p>21 questions -- Mr. Kemp asked you some questions about, it</p> <p>22 looks like the fourth paragraph down, starts with the</p> <p>23 word "Okay," where it says "Okay. The first key message</p> <p>24 I want to deliver today is that our primary goal as</p> <p>25 managers of these funds is to manage the funds towards</p>

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<p style="text-align: right;">Page 1023</p> <p>1 divided into three, I believe you indicated that</p> <p>2 represented something on the order of, like, 20 percent</p> <p>3 of your business at that time; is that right?</p> <p>4 A. I can't recall the exact percentage, but we</p> <p>5 have a breakdown of it. I would think 20 to 30 or</p> <p>6 something like that.</p> <p>7 MR. FALLAS: I'm sorry. What was that</p> <p>8 question?</p> <p>9 MR. CARLIN: I said the percentage of his</p> <p>10 business that he took with him when he went to Raymond</p> <p>11 James of not just these Claimants but also the prior --</p> <p>12 the Garrett arbitration, because these, Mr. Fallas, had</p> <p>13 started out as one. There was a Claimant group there,</p> <p>14 and then there's this Claimant group in this one. Does</p> <p>15 that make sense?</p> <p>16 MR. FALLAS: Your question is?</p> <p>17 Q. (BY MR. CARLIN) I just wanted to confirm,</p> <p>18 Mr. Stein, I believe you had previously testified in</p> <p>19 that other proceeding that this group of Claimants in</p> <p>20 both the Arispe case and the Garrett case amounted to</p> <p>21 about 20 to 25 percent of your business that you had</p> <p>22 when you went to Raymond James in the spring of 2008; is</p> <p>23 that right?</p> <p>24 A. That sounds about right.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 1025</p> <p>1 question.</p> <p>2 Q. (BY MR. CARLIN) Of the Garrett and Arispe</p> <p>3 clients, how much of your book did that represent at the</p> <p>4 time you went over?</p> <p>5 A. And I think it was around 20 or 30 percent.</p> <p>6 MR. CARLIN: Thank you for making that a</p> <p>7 much clearer question.</p> <p>8 Q. (BY MR. CARLIN) So, sir, I understand these</p> <p>9 kind of bonus and broker arrangements are a little bit</p> <p>10 complicated because there's tax reasons and there's</p> <p>11 loans and then there's pay-back schedules, right?</p> <p>12 A. That's correct.</p> <p>13 Q. But the bottom line is, you received an</p> <p>14 up-front bonus, according to Exhibit 96, of about</p> <p>15 \$875,000 to go over and start that Raymond James -- or</p> <p>16 to take your practice over to Raymond James, correct?</p> <p>17 A. That's correct.</p> <p>18 Q. And if you had left or if Raymond James had</p> <p>19 terminated you for whatever reason, they could call that</p> <p>20 loan and try to get that -- try to get that bonus back,</p> <p>21 right? That's the way this is structured, correct?</p> <p>22 A. I believe so.</p> <p>23 MR. KERR: It's an earnout.</p> <p>24 THE WITNESS: Yes, sir, it is, Your Honor.</p> <p>25 MR. CARLIN: Again, thank you very much,</p>
<p style="text-align: right;">Page 1024</p> <p>1 A. And the exact numbers could be --</p> <p>2 Q. Fair enough. I'm not trying to pin you down to</p> <p>3 what percent.</p> <p>4 MR. CARLIN: Do you understand,</p> <p>5 Mr. Fallas?</p> <p>6 MR. FALLAS: So, it has to do with the</p> <p>7 percentage of clients that -- percentage -- percentage</p> <p>8 that these Funds represented of his business or the</p> <p>9 percentage of clients who moved with him?</p> <p>10 MR. CARLIN: It has to do with the</p> <p>11 percentage -- it has to do with the clients who are</p> <p>12 Claimants in these two arbitrations who moved with him.</p> <p>13 MR. KERR: And that's based on some kind</p> <p>14 of dollar estimate?</p> <p>15 MR. CARLIN: Yes. It's a percentage of</p> <p>16 dollar business.</p> <p>17 MR. FALLAS: So, in a large sense, you're</p> <p>18 asking what portion of his overall business was in these</p> <p>19 Funds?</p> <p>20 MR. CARLIN: Well, was with these clients.</p> <p>21 Because these clients also had some other investments,</p> <p>22 too.</p> <p>23 MR. FALLAS: Okay. So, how much of his</p> <p>24 book was represented --</p> <p>25 MR. CARLIN: There you go. Much better</p>	<p style="text-align: right;">Page 1026</p> <p>1 Mr. Chair.</p> <p>2 Q. (BY MR. CARLIN) It's an earnout that's subject</p> <p>3 to recapture, right?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. So, as of the time that you went over</p> <p>6 there, this group of Claimants and those in the Garrett</p> <p>7 case represented a very significant book of your</p> <p>8 business, correct, portion of your book of business?</p> <p>9 A. Yes.</p> <p>10 Q. And represented a very significant portion of</p> <p>11 the bonus that you got paid to Raymond James, correct,</p> <p>12 to go to Raymond James?</p> <p>13 A. Oh, yeah.</p> <p>14 Q. So --</p> <p>15 A. Yes.</p> <p>16 Q. If those -- if those clients didn't come with</p> <p>17 you, you wouldn't have gotten that bonus or anywhere</p> <p>18 near that size of bonus, correct?</p> <p>19 A. If I hadn't earned out the business, that's</p> <p>20 correct. It's an -- it's an earnout arrangement, that</p> <p>21 if your business and your assets equal what you had --</p> <p>22 Q. They're estimating what your business is going</p> <p>23 to be when you come over; and if you don't deliver, they</p> <p>24 can capture that bonus back, right?</p> <p>25 A. That's correct.</p>

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<p style="text-align: right;">Page 1047</p> <p>1 A. I do not know that term.</p> <p>2 Q. And you've been a broker for 40 years with</p> <p>3 asset-backed securities experience for the past 20,</p> <p>4 right?</p> <p>5 A. That's correct.</p> <p>6 Q. And you had never heard that term until we got</p> <p>7 here, right?</p> <p>8 A. Yes.</p> <p>9 Q. Now, we talked about when you left and what you</p> <p>10 knew and Mr. Kemp asked you a couple of questions about</p> <p>11 that. I just want to make this clear. When you were</p> <p>12 with Morgan Keegan, you got tons of information, right?</p> <p>13 A. Yes.</p> <p>14 Q. From Mr. Kelsoe, from the documentation, from</p> <p>15 the reports, right?</p> <p>16 A. Yes.</p> <p>17 Q. And you, sir, used your best judgment based on</p> <p>18 your 40 years of experience as to what you thought was</p> <p>19 going on, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And you did not think that they had done</p> <p>22 anything wrong despite all of these fairly terrible</p> <p>23 events happening, right?</p> <p>24 A. That's correct.</p> <p>25 Q. And even after you left you didn't think</p>	<p style="text-align: right;">Page 1049</p> <p>1 Q. And that's market risk, isn't it?</p> <p>2 A. Yes.</p> <p>3 MR. CARLIN: I have nothing further.</p> <p>4 MR. KERR: Are we done?</p> <p>5 MR. KEMP: Two questions.</p> <p>6 MR. KERR: Okay. Good.</p> <p>7 FURTHER REDIRECT EXAMINATION</p> <p>8 Q. (BY MR. KEMP) Mr. Carlin just talked about all</p> <p>9 this information you got and how you used your 40 years</p> <p>10 of experience. Having used that 40 years of experience</p> <p>11 as an agent for Morgan Keegan, what was your</p> <p>12 recommendation to these Claimants as it relates to the</p> <p>13 investment in these Funds?</p> <p>14 A. To stay with them and reinvest the dividends</p> <p>15 and wait for better times.</p> <p>16 Q. And was your -- your recommendation also on</p> <p>17 their initial investment into these Funds?</p> <p>18 A. Yes.</p> <p>19 Q. And did you expect these Claimants to rely on</p> <p>20 your recommendation?</p> <p>21 A. Absolutely.</p> <p>22 MR. KEMP: Pass the witness.</p> <p>23 MR. KERR: All right. Thank you.</p> <p>24 MR. CARLIN: May I have one more question,</p> <p>25 Mr. Chairman?</p>
<p style="text-align: right;">Page 1048</p> <p>1 anything had been done wrong until you attended this</p> <p>2 wake-up Hyperion conference call, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And by the way, you mentioned just now about</p> <p>5 the banks came in and they took the good stuff and left</p> <p>6 the other stuff behind, right?</p> <p>7 A. In general terms, yes.</p> <p>8 Q. Would you agree with me based on what we've</p> <p>9 seen today, even the good stuff, the AAA, got hit hard</p> <p>10 in this crisis, didn't it?</p> <p>11 A. Yes.</p> <p>12 Q. So, even the banks taking the good stuff, they</p> <p>13 lost a lot of money, too, didn't they?</p> <p>14 A. That's correct.</p> <p>15 Q. And you're aware, sir, that a closed-end fund</p> <p>16 is -- because, again, you brought up the closed-end</p> <p>17 fund, closed-end funds may not have the redemption risk,</p> <p>18 but they're exposed to the market risk, right?</p> <p>19 A. That's correct.</p> <p>20 Q. And we saw that chart showing these Funds</p> <p>21 trading at a premium until that premium evaporated in</p> <p>22 June of 2007, right?</p> <p>23 A. That's correct.</p> <p>24 Q. And after that they traded at a discount?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 1050</p> <p>1 MR. KERR: This is the last question.</p> <p>2 MR. CARLIN: Thank you very much.</p> <p>3 FURTHER RECROSS-EXAMINATION</p> <p>4 Q. (BY MR. CARLIN) That recommendation continued</p> <p>5 after you left Morgan Keegan in March of '08 and you</p> <p>6 were no longer Morgan Keegan's agent. You were Raymond</p> <p>7 James' agent at that point in time, right?</p> <p>8 A. That's correct.</p> <p>9 Q. And the recommendation did not change, correct?</p> <p>10 A. That's correct.</p> <p>11 MR. KERR: All right. Do my colleagues</p> <p>12 have any questions?</p> <p>13 MR. MARTIN: No questions.</p> <p>14 MR. KERR: Do you have any questions?</p> <p>15 MR. FALLAS: (Nods head affirmatively.)</p> <p>16 MR. KERR: Okay.</p> <p>17 MR. FALLAS: Mr. Stein, sometime the other</p> <p>18 day, whenever that first day you testified, I remember</p> <p>19 you saying something about how they, at some point, they</p> <p>20 could no longer pay the full dividend and it was</p> <p>21 reduced. You said it had -- it had been -- I think it</p> <p>22 had been 14 cents and then they reduced it at some point</p> <p>23 to a lower number, maybe 11 cents or something. My</p> <p>24 question is -- you did use the phrase -- I wrote it</p> <p>25 down -- you used the phrase "full dividend." What did</p>

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<p>1 you mean by that?</p> <p>2 THE WITNESS: Full dividend being the</p> <p>3 announced quarterly full payment on a monthly basis.</p> <p>4 MR. FALLAS: Okay. But it was only</p> <p>5 because it was -- it was only because it was what had</p> <p>6 been customary before that you called it full.</p> <p>7 THE WITNESS: Yes, declared.</p> <p>8 MR. FALLAS: But not because it was stated</p> <p>9 anywhere.</p> <p>10 THE WITNESS: No, it was -- it was the</p> <p>11 declared dividend that they declared on a quarterly</p> <p>12 basis.</p> <p>13 MR. FALLAS: Okay. But what I'm saying</p> <p>14 is, when you say "full," you're not saying that that</p> <p>15 implies that there was, like, a coupon rate or a --</p> <p>16 THE WITNESS: Oh, no.</p> <p>17 MR. FALLAS: Okay. Essentially, it was</p> <p>18 just what everybody had been used to.</p> <p>19 THE WITNESS: That's correct.</p> <p>20 MR. FALLAS: Okay. You also said the</p> <p>21 other day that Morgan Keegan had issued, you know,</p> <p>22 glossies and things like that, marketing materials; and</p> <p>23 I believe -- I'm not a hundred percent sure -- I believe</p> <p>24 you referred to those as buy recommendations or</p> <p>25 alternatively you said that they did from time to time</p>	<p>1 went -- and the NAV had also dropped by a corresponding</p> <p>2 amount.</p> <p>3 THE WITNESS: I believe that came from the</p> <p>4 conference call in September of '08, and that the</p> <p>5 transcript in the Hyperion conference call referred --</p> <p>6 referenced a corresponding decline in net asset value to</p> <p>7 the dividend. So, it's -- it's in that transcript.</p> <p>8 MR. FALLAS: Okay. When you say</p> <p>9 corresponding value, was that a similar amount or was it</p> <p>10 penny for penny?</p> <p>11 THE WITNESS: I would have to go to the</p> <p>12 transcript and see what he -- the specific of his</p> <p>13 reference, but it -- it wouldn't be penny for penny, I</p> <p>14 don't think.</p> <p>15 MR. FALLAS: Okay. So, it just appeared</p> <p>16 that the -- if you saw a dividend and then, you know,</p> <p>17 the NAV had also gone down, it appeared they were pretty</p> <p>18 close.</p> <p>19 THE WITNESS: Fairly close.</p> <p>20 MR. FALLAS: It wasn't like a journal</p> <p>21 entry --</p> <p>22 THE WITNESS: No.</p> <p>23 MR. FALLAS: -- where you saw, like, you</p> <p>24 know, 105 on this column and 105 on that column?</p> <p>25 THE WITNESS: That's correct, no.</p>
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<p>1 issue buy recommendations on the stock.</p> <p>2 THE WITNESS: I believe I called them buy</p> <p>3 recommendations or marketing updates, research reports,</p> <p>4 yeah.</p> <p>5 MR. FALLAS: Okay. Did -- did -- to your</p> <p>6 knowledge, did Morgan Keegan ever issue explicit buy</p> <p>7 recommendations for those RMK Funds? In other words,</p> <p>8 let me give you a little bit more background. Typically</p> <p>9 on stocks, like, you know, IBM or Microsoft or, you</p> <p>10 know, Exxon or something, firms will issue research</p> <p>11 reports and they'll have buy, strong buy, hold, sell,</p> <p>12 you know, that kind of thing. Did they do this on the</p> <p>13 RMK Funds?</p> <p>14 THE WITNESS: They didn't issue opinions</p> <p>15 like that. They did put them in their platform of -- of</p> <p>16 manager program and they also recommended these Funds</p> <p>17 for the Regions people on moving CD money to them,</p> <p>18 things like that. So, they were recommending them, but</p> <p>19 I don't recall seeing a, quote, "research, strong buy,"</p> <p>20 like you're referencing.</p> <p>21 MR. FALLAS: Okay. And you also talked</p> <p>22 about the -- you said that there -- you had noticed that</p> <p>23 there was a corresponding reduction in net asset value</p> <p>24 to the dividends that they had been paying. You saw,</p> <p>25 like, if they had paid a dollar in dividends, then you</p>	<p>1 MR. FALLAS: Just about three or four</p> <p>2 more.</p> <p>3 MR. CARLIN: If you want to look at it,</p> <p>4 it's their Exhibit 226.</p> <p>5 MR. KEMP: And I can give you the page</p> <p>6 cites, if that would help.</p> <p>7 MR. FALLAS: Regarding the advantages of</p> <p>8 the closed-end bond funds, you said that they're not</p> <p>9 subject to redemption; and it's also already been</p> <p>10 brought out that -- well, there's also market risk, too.</p> <p>11 So, I'm not going to go over that again; but if you</p> <p>12 have -- if you have a -- if you have certain bonds in</p> <p>13 the closed-end fund and everybody else on the street is</p> <p>14 dumping those bonds but your manager doesn't have to</p> <p>15 sell them because he doesn't want to sell them and</p> <p>16 nobody is asking him for money, isn't it still -- don't</p> <p>17 you still have to suffer what everybody else is doing</p> <p>18 even though you're not selling, the prices are dropping,</p> <p>19 correct?</p> <p>20 THE WITNESS: That's correct.</p> <p>21 MR. FALLAS: Okay.</p> <p>22 THE WITNESS: The NAV would continue to go</p> <p>23 down with the pricing.</p> <p>24 MR. FALLAS: So, it's not really the same</p> <p>25 as market risk because market risk is -- is, you know,</p>

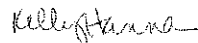
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<p>1 basically if -- there is a discount now to the NAV.</p> <p>2 This is actually true NAV going down because it's --</p> <p>3 because those bonds are being sold off, so the prices</p> <p>4 are falling.</p> <p>5 THE WITNESS: That's correct. And it's</p> <p>6 separate from the price on the New York Stock Exchange.</p> <p>7 MR. FALLAS: Right. But basically,</p> <p>8 it's -- I know what -- I know what you were trying to</p> <p>9 say, but the -- there still -- there still is a -- it's</p> <p>10 not the same -- there's kind of like a redemption risk</p> <p>11 by association sort of that -- would you tend to agree</p> <p>12 with that?</p> <p>13 THE WITNESS: There's -- there's not a</p> <p>14 redemption risk associated with that in that in a</p> <p>15 closed-end bond fund you can -- you can wade through the</p> <p>16 downward pressure, just like the Lehman Brothers High</p> <p>17 Yield Ba Index was down that particular year that we're</p> <p>18 talking about, it was down about 2 percent; and our</p> <p>19 Funds were down about 70 percent. And the other high</p> <p>20 yield bond funds were able to recover closed-end, they</p> <p>21 were able to recover as the crisis eventually passed.</p> <p>22 MR. FALLAS: Right. But essentially, what</p> <p>23 it means is the manager doesn't have to sell because</p> <p>24 people are dumping it?.</p> <p>25 THE WITNESS: That's correct.</p>	<p>1 investment consultant." When you say "the," does that</p> <p>2 mean you were the only one, like you were the official</p> <p>3 investment consultant for that entire pension fund?</p> <p>4 THE WITNESS: That's -- that's correct.</p> <p>5 They would have an actuarial firm. They would have an</p> <p>6 investment consultant, which in this case was me. At</p> <p>7 the Permanent School Fund, they used two different.</p> <p>8 They used me, and they also used New England Pension</p> <p>9 Consulting, NEPC.</p> <p>10 MR. FALLAS: So, the -- in one case the</p> <p>11 entire -- some of those other pension funds, I think for</p> <p>12 the carpenters or whatever, the entire pension fund only</p> <p>13 used one broker.</p> <p>14 THE WITNESS: Not one broker. The money</p> <p>15 managers were in charge of how they did their business</p> <p>16 with the different brokerage firms. I was the one</p> <p>17 investment consultant professional at helping them with</p> <p>18 their asset liability match up for future liabilities,</p> <p>19 their investment policy and guideline statements. I --</p> <p>20 for y'all's sake, it would be -- it's an investment</p> <p>21 policy. Then thirdly, picking the managers, helping</p> <p>22 select the managers. And then lastly, monitoring the</p> <p>23 managers versus their respective agreed-upon benchmarks.</p> <p>24 MR. FALLAS: Okay. I think this is going</p> <p>25 to be my last question. There's been a lot of mention</p>
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<p>1 MR. FALLAS: But the prices are still</p> <p>2 going to be depressed until they -- you know, unless and</p> <p>3 until they recover.</p> <p>4 THE WITNESS: That's -- that's absolutely</p> <p>5 correct and that's the reason for the benefit of</p> <p>6 dividend reinvestment, being able to take that cash flow</p> <p>7 and reinvest at no charge and at a discount even to --</p> <p>8 sometimes if the market price is below the NAV like</p> <p>9 we're almost describing, you can even get a double bump,</p> <p>10 not just the one Mr. Carlin talked about, which was the</p> <p>11 reinvestment at no cost, no commission.</p> <p>12 MR. FALLAS: Right. But, again, all of</p> <p>13 that assumes that one day the market will come back or</p> <p>14 the prices will come back.</p> <p>15 THE WITNESS: Eventually, yes.</p> <p>16 MR. FALLAS: Obviously, if the prices</p> <p>17 continue to go down or like Enron, if you had Enron</p> <p>18 bonds, they went down, they went one way and they were</p> <p>19 gone.</p> <p>20 THE WITNESS: That's right, yes.</p> <p>21 MR. KERR: Anything further?</p> <p>22 MR. FALLAS: About two more. You</p> <p>23 mentioned, I think it was today, that for the various</p> <p>24 pension funds and whatever, you said -- they asked what</p> <p>25 was your role in that relationship. You said "I was the</p>	<p>1 all week long about reinvest the dividends, continue to</p> <p>2 reinvest, purchase more and then -- I mean, reinvestment</p> <p>3 has been a big theme and other than -- other than the</p> <p>4 two reasons that you've given as far as the, you know,</p> <p>5 you could buy it at NAV and that there was no commission</p> <p>6 on the reinvested shares, is there any other incentive</p> <p>7 for, you know, for leaving everything in the Fund and</p> <p>8 then taking the cash it pays out and continue to</p> <p>9 reinvest it back in the Fund constantly? Is there any</p> <p>10 other special incentive or incentive credit, a broker</p> <p>11 bonus or anything like that?</p> <p>12 THE WITNESS: There is no 12b-1. There is</p> <p>13 nothing. In fact, the third benefit that -- that we</p> <p>14 really didn't talk about is that if the New York Stock</p> <p>15 Exchange price gets below the NAV, then you buy the --</p> <p>16 you reinvest in the market price that's below NAV so</p> <p>17 that you not only get the two benefits of no commission</p> <p>18 and -- and compounding that we talked about, you also,</p> <p>19 if market price comes back up to NAV, you get</p> <p>20 appreciation. So, it's the most riskless, cheapest,</p> <p>21 inexpensive way to make your money compound; and that's</p> <p>22 the reason that the example that Michael Gibbs out of</p> <p>23 Morgan Keegan wrote -- it's a well-done piece.</p> <p>24 MR. FALLAS: But is there any other -- any</p> <p>25 other reason why, as the -- as the firm or as the agent,</p>

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<p>1 A. Yes.</p> <p>2 Q. Okay.</p> <p>3 MS. BLACKWELL: I don't think we have any</p> <p>4 more questions.</p> <p>5 MR. KERR: All right. Thank you.</p> <p>6 Anything further.</p> <p>7 MR. STAFFORD: Nothing further.</p> <p>8 MR. KERR: All right. My colleague has</p> <p>9 got a couple questions for you.</p> <p>10 MR. FALLAS: Mr. Burke, when -- when you</p> <p>11 originally made your first purchase of this -- these</p> <p>12 Funds or if there were more than one, did -- did you get</p> <p>13 a prospectus?</p> <p>14 THE WITNESS: I'm sure I did. I don't</p> <p>15 specifically remember getting it, but it seems like that</p> <p>16 any time anything like that happened, I would; and I</p> <p>17 would get them from time to time in the mail, annual</p> <p>18 reports. I remember getting that type of data. If</p> <p>19 you're asking me do I remember specifically getting a</p> <p>20 prospectus when -- when that happened, I don't. I feel</p> <p>21 certain I did and I would have glanced over it and if I</p> <p>22 would have had any questions, I would have certainly</p> <p>23 referred them to Mr. Stein.</p> <p>24 MR. FALLAS: Okay. Other than a</p> <p>25 prospectus, do you remember being given a brochure or a</p>	<p>1 THE WITNESS: No. No, I do not.</p> <p>2 MR. FALLAS: Regarding the -- the holdings</p> <p>3 that you had of when they paid dividends, did you</p> <p>4 reinvest them?</p> <p>5 THE WITNESS: Yes.</p> <p>6 MR. FALLAS: Every month?</p> <p>7 THE WITNESS: Yes.</p> <p>8 MR. FALLAS: Did you ever choose to not</p> <p>9 reinvest or take some of that money and put it in cash?</p> <p>10 THE WITNESS: I did do that at one point</p> <p>11 in time five or six years ago, I'm thinking it was,</p> <p>12 pulled out, I think it was either 70 or \$75,000 from --</p> <p>13 from my investment fund.</p> <p>14 MR. FALLAS: Okay. Was part of that your</p> <p>15 principal, or was that just the dividend payment? Like</p> <p>16 liquidating to buy something else.</p> <p>17 THE WITNESS: I suppose that would have</p> <p>18 been principal.</p> <p>19 MR. FALLAS: But in terms of the monthly,</p> <p>20 you know, when it paid, you know, 14 cents, 15 cents,</p> <p>21 which, you know, could have been a couple thousand</p> <p>22 dollars -- were you going to say something?</p> <p>23 THE WITNESS: Yes. Monthly, a portion of</p> <p>24 the account that's under my wife's name and a portion</p> <p>25 out of the two accounts of the three that's in my name,</p>
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<p>1 one-page summary or just, you know, an explanation of</p> <p>2 the Fund or what you were buying?</p> <p>3 THE WITNESS: I -- again, I am certain I</p> <p>4 was. I would have expected it. I can't sit here today</p> <p>5 and tell you I specifically remember getting that --</p> <p>6 that piece of document.</p> <p>7 MR. FALLAS: But if -- any of that stuff</p> <p>8 that you would have gotten, would you have basically not</p> <p>9 really relied on it but -- but asked Mr. Stein?</p> <p>10 THE WITNESS: Typically what I would do</p> <p>11 because of my lack of knowledge in this arena would be</p> <p>12 read that, some of it thorough, certainly not</p> <p>13 understanding everything I would have read. Some of it</p> <p>14 I would skim. And if I had questions, I would end up</p> <p>15 having to call Russell, because my area of expertise is</p> <p>16 not in finance.</p> <p>17 MR. FALLAS: Okay. Did you know or was it</p> <p>18 explained to you before you made your first purchase of</p> <p>19 these Funds that it was considered a speculative junk</p> <p>20 bond, kind of risky, anything like that?</p> <p>21 THE WITNESS: I don't specifically</p> <p>22 remember that conversation.</p> <p>23 MR. FALLAS: And not only a conversation,</p> <p>24 but you don't really remember being aware of that</p> <p>25 tendency.</p>	<p>1 we -- we make a monthly withdrawal, if you will, to go</p> <p>2 with the Social Security and retirement checks to</p> <p>3 maintain the standard of living that we want to.</p> <p>4 MR. FALLAS: Okay.</p> <p>5 THE WITNESS: Now, that's in addition to</p> <p>6 the roughly 70,000 we pulled out some years back.</p> <p>7 MR. FALLAS: Okay. So, with respect to</p> <p>8 the re -- you know, the cash that was reinvested every</p> <p>9 month, what was -- what was your reason for -- for just</p> <p>10 continuing to roll that over? Why did you let that</p> <p>11 money continue to reinvest?</p> <p>12 THE WITNESS: Well, hoped for that</p> <p>13 particular account or fund to -- to grow, gain.</p> <p>14 MR. FALLAS: So, you didn't really need</p> <p>15 that cash for anything on a monthly basis.</p> <p>16 THE WITNESS: Yeah, I need that money on a</p> <p>17 monthly basis. I've lost, you know, about 35 or</p> <p>18 40 percent of my retirement account over the last four</p> <p>19 years. So, I need every penny I can turn back into that</p> <p>20 account.</p> <p>21 MR. FALLAS: I mean at the time. You</p> <p>22 know, every month it paid a dividend and it was maybe a</p> <p>23 few thousand dollars, depending on your -- the size of</p> <p>24 your holdings.</p> <p>25 THE WITNESS: Fortunately, there's enough</p>

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<p>1 materials will be secure.</p> <p>2 MS. BLACKWELL: Yes.</p> <p>3 MR. KERR: And we can leave the binders.</p> <p>4 We can leave what of our stuff here we want to and take</p> <p>5 what we want to.</p> <p>6 MS. BLACKWELL: Anything you want to</p> <p>7 leave, if you'll just leave it on your carts, the carts</p> <p>8 will be in a secure area.</p> <p>9 MR. KERR: Well, I had those two boxes of</p> <p>10 documents and I want to leave --</p> <p>11 MS. BLACKWELL: We will put those with</p> <p>12 those.</p> <p>13 MR. CARLIN: And, Mr. Fallas, did you have</p> <p>14 any personal data on the firm's laptop?</p> <p>15 MR. FALLAS: I don't think so.</p> <p>16 MR. CARLIN: Okay. I just didn't know if</p> <p>17 you were keeping any notes on there or anything that you</p> <p>18 wanted to print or save otherwise.</p> <p>19 MR. FALLAS: But I'll check.</p> <p>20 MR. KERR: Go ahead, sir.</p> <p>21 MR. DOBROWSKI: I just want to confirm,</p> <p>22 1:30 conference call on Thursday, not 2:00.</p> <p>23 MR. KERR: Yes, sir. 1:30 conference</p> <p>24 call. So, everybody put that in your calendar. I'm</p> <p>25 going to call Elizabeth Muldoon. We're going to set</p>	<p>1 STATE OF TEXAS</p> <p>2 COUNTY OF HARRIS</p> <p>3</p> <p>4 REPORTER'S CERTIFICATE</p> <p>5 ARBITRATION HEARING</p> <p>6 October 15, 2010</p> <p>7</p> <p>8 I, the undersigned Certified Shorthand Reporter in</p> <p>9 and for the State of Texas, certify that the facts</p> <p>10 stated in the foregoing pages are true and correct.</p> <p>11 I further certify that I am neither attorney or</p> <p>12 counsel for, related to, nor employed by any parties to</p> <p>13 the action in which this testimony is taken and,</p> <p>14 further, that I am not a relative or employee of any</p> <p>15 counsel employed by the parties hereto or financially</p> <p>16 interested in the action.</p> <p>17 SUBSCRIBED AND SWORN TO under my hand and seal of</p> <p>18 office on this the 25th day of October, 2010.</p> <p>19 </p> <p>20</p> <p>21 Kelly Hanna, CSR, RPR, CRR, CMRS</p> <p>22 Texas CSR 1654</p> <p>23 Expiration: 12/31/2011</p> <p>24 1225 North Loop West</p> <p>25 Suite 327</p> <p>Houston, Texas 77008</p> <p>713.840.8484 - 713.626.1966</p> <p>www.hannareporting.com</p>
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<p>1 that up. And we look forward to seeing you again and</p> <p>2 hopefully as soon as possible.</p> <p>3 (Proceedings recessed at 4:54 p.m.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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19 January, 2011, from 8.56 a.m. to 4.29 p.m., before Kelly	21 Direct Examination by Mr. Stafford1345
20 Hanna, Certified Shorthand Reporter in and for the State	Cross-Examination by Mr. Weiss1347
21 of Texas, reported by computerized stenotype machine at	22
22 the offices of Greenberg Traurig, 1000 Louisiana, Suite	23 RICHARD R. ARISPE
23 1700, Houston, Texas, pursuant to the Federal Rules of	24 Direct Examination by Mr. Stafford1360
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6 4602 Washington Avenue, Suite 300	6
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7 Telephone: 713.659.2900	8 Direct Examination by Mr. Stafford1388
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14 Telephone: 678.553.2100	ReCross-Examination by Mr. Weiss1459
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21 Mr. Jose Collado, Claimant	
22 Ms. Judy Strickland, Claimant	
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23 Mr. Richard Arispe, Claimant	
23 Mr. Stephen Stein, Claimant	
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24 Mr. Steve Scales, Expert	
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<p style="text-align: right;">Page 1222</p> <p>1 A. Yes.</p> <p>2 Q. Now, when you -- when you say that you didn't</p> <p>3 have a problem with the prospectus or any of the</p> <p>4 documents, are you suggesting to the Panel that you went</p> <p>5 through there and looked through all of the statements</p> <p>6 to determine whether or not they were accurate?</p> <p>7 A. Never.</p> <p>8 Q. And so upon who were you relying to determine</p> <p>9 whether or not the statements in there were</p> <p>10 misrepresented or inaccurate?</p> <p>11 A. Mr. Stein.</p> <p>12 MR. STAFFORD: Nothing further.</p> <p>13 MR. KERR: Do you have any?</p> <p>14 FURTHER RECROSS-EXAMINATION</p> <p>15 Q. (BY MR. WEISS) Well, just so we're clear. When</p> <p>16 Mr. Stein sent you these documents, he didn't discuss</p> <p>17 each and every statement that was contained in those</p> <p>18 documents with you in the first place, did he?</p> <p>19 A. No.</p> <p>20 Q. He sent them on to you and he expected you to</p> <p>21 look at them, right?</p> <p>22 A. Not necessarily.</p> <p>23 Q. Well, he didn't send them to you expecting you</p> <p>24 to throw them in the trash, did he?</p> <p>25 A. I don't know. Do you read all the prospectuses</p>	<p style="text-align: right;">Page 1224</p> <p>1 you put it into this fund or this investment, did he</p> <p>2 tell you very much about what you were investing in?</p> <p>3 THE WITNESS: No.</p> <p>4 MR. FALLAS: Did you know that it was</p> <p>5 considered risky or speculative?</p> <p>6 THE WITNESS: Not really. I just trusted</p> <p>7 Russell.</p> <p>8 MR. FALLAS: Did Mr. Stein tell you that</p> <p>9 it was risky or speculative?</p> <p>10 THE WITNESS: Not really, no.</p> <p>11 MR. FALLAS: Did he tell you that it was</p> <p>12 less than -- anything less than safe or, you know,</p> <p>13 anything not comparable to a CD?</p> <p>14 THE WITNESS: I don't think -- I don't</p> <p>15 think that we ever fully discussed that. I mean, any</p> <p>16 time you invest in something other than a treasury it's</p> <p>17 got more risk than anything else.</p> <p>18 MR. FALLAS: So, did you -- at that time</p> <p>19 did you understand what you were buying?</p> <p>20 THE WITNESS: Not really.</p> <p>21 MR. FALLAS: And did you -- did you</p> <p>22 understand the nature of the -- of continuing to</p> <p>23 reinvest?</p> <p>24 THE WITNESS: Yes.</p> <p>25 MR. FALLAS: Why did you choose to keep</p>
<p style="text-align: right;">Page 1223</p> <p>1 you get?</p> <p>2 Q. I'm asking you the question, Mr. Rhodes.</p> <p>3 A. No, I did not.</p> <p>4 Q. He sent you the documents expecting you to read</p> <p>5 them, right?</p> <p>6 A. I don't know what he expected.</p> <p>7 MR. WEISS: Go ahead.</p> <p>8 MR. KERR: Mr. Fallas, do you have a</p> <p>9 question?</p> <p>10 MR. FALLAS: Yes, I have maybe one or two.</p> <p>11 Mr. Rhodes, when you first got into these</p> <p>12 investments, the RMK Funds, did you discuss them with</p> <p>13 Mr. Stein?</p> <p>14 THE WITNESS: When I made my first</p> <p>15 investment, I had a certificate of deposit that had</p> <p>16 matured and I was looking for somewhat better of a</p> <p>17 return on it. So, I called Russell and I said "Russell,</p> <p>18 do you have any suggestions where I can put the \$50,000</p> <p>19 that's just matured? I would like to enhance the return</p> <p>20 on it."</p> <p>21 He said, "Yeah, we have a fund that will</p> <p>22 pay approximately 1 percent a month." And he said "It's</p> <p>23 absolutely safe. There's no subprime in it or</p> <p>24 anything."</p> <p>25 MR. FALLAS: So, when he suggested that</p>	<p style="text-align: right;">Page 1225</p> <p>1 reinvesting as opposed to taking --</p> <p>2 THE WITNESS: I didn't need the money. I</p> <p>3 mean, it was an investment. It wasn't to live on. Not</p> <p>4 at that time.</p> <p>5 MR. FALLAS: Okay.</p> <p>6 MR. KERR: Mr. Martin, do you have any</p> <p>7 questions?</p> <p>8 MR. MARTIN: I have a question, yes.</p> <p>9 Sir, could you please pull out</p> <p>10 Respondent's No. 681. Do you have it in front of you,</p> <p>11 sir?</p> <p>12 THE WITNESS: No. Excuse me. That's 80.</p> <p>13 MR. MARTIN: I understand it's in Volume</p> <p>14 No. 8.</p> <p>15 THE WITNESS: Okay.</p> <p>16 MR. MARTIN: Do you have it in front of</p> <p>17 you now, sir?</p> <p>18 THE WITNESS: Yes, I do.</p> <p>19 MR. MARTIN: It's a question for</p> <p>20 clarification. On Exhibit No. 681, there is a lot of</p> <p>21 statements in there where you're stating that you will</p> <p>22 do something or we will do something. And for the</p> <p>23 Panel's clarification, how can we determine from this</p> <p>24 e-mail whether you are the one making that decision in</p> <p>25 that direction as a fiduciary or whether you are, as you</p>

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<p style="text-align: right;">Page 1258</p> <p>1 REDIRECT EXAMINATION</p> <p>2 Q. (BY MR. STAFFORD) Sir, do you recall Mr. Weiss</p> <p>3 showing you the quote from Don Jones and asking you</p> <p>4 whether or not you agreed and I think you said you did</p> <p>5 not?</p> <p>6 A. No, I mean, I don't know Mr. Jones; and I can't</p> <p>7 see how I could agree with someone I don't even know</p> <p>8 what he's talking about.</p> <p>9 Q. I'm sorry. Could you tell the Panel whether or</p> <p>10 not your relying on Mr. Stein and your attorneys to</p> <p>11 determine which documents of Morgan Keegan are</p> <p>12 misleading or inaccurate?</p> <p>13 A. No. I relied on -- if something was wrong, I</p> <p>14 relied on them to tell me.</p> <p>15 Q. Okay.</p> <p>16 A. I never had anything -- no.</p> <p>17 MR. STAFFORD: Nothing further.</p> <p>18 MR. KERR: Did that raise any questions?</p> <p>19 MR. WEISS: I don't have anything further.</p> <p>20 MR. KERR: All right. Do you have any</p> <p>21 questions, Mr. Fallas?</p> <p>22 MR. FALLAS: Yeah, one.</p> <p>23 When you originally invested in the RMK</p> <p>24 Funds, did you know what they entailed, what they --</p> <p>25 what they consisted of?</p>	<p style="text-align: right;">Page 1260</p> <p>1 MR. FALLAS: And you didn't ask him?</p> <p>2 THE WITNESS: No.</p> <p>3 MR. FALLAS: It was just a choice that he</p> <p>4 was making.</p> <p>5 THE WITNESS: Right. I'm not a</p> <p>6 stockbroker or -- I guess that's evident.</p> <p>7 MR. FALLAS: Did you -- did you know</p> <p>8 that -- that it was risky or that it was anything, you</p> <p>9 know, unusual?</p> <p>10 THE WITNESS: No. Now, when -- like I</p> <p>11 was -- when I would look online and, say, my funds'</p> <p>12 total wasn't doing as well, I know it would be long</p> <p>13 term. That's what I've always heard. Wait long term.</p> <p>14 Wait. Things go up and down.</p> <p>15 MR. FALLAS: Okay. At the time that the</p> <p>16 prices started to go down and, you know, there was a</p> <p>17 time where it went down, you know, consistently --</p> <p>18 THE WITNESS: Right.</p> <p>19 MR. FALLAS: -- at that point did you --</p> <p>20 did you know that it was, you know, on the risky side?</p> <p>21 THE WITNESS: No. No, honestly, no.</p> <p>22 MR. FALLAS: Did you think at that time</p> <p>23 that you could have lost the entire -- that it could go</p> <p>24 to zero or that it could go almost to zero?</p> <p>25 THE WITNESS: No.</p>
<p style="text-align: right;">Page 1259</p> <p>1 THE WITNESS: No. No.</p> <p>2 MR. FALLAS: Did you know anything about</p> <p>3 them, like the nature of whether they were stocks or</p> <p>4 bonds or --</p> <p>5 THE WITNESS: No. This is -- if I -- if I</p> <p>6 did anything, it was from basic knowledge from the</p> <p>7 common public. I know that you should have a</p> <p>8 diversified -- you shouldn't put all your apples in one</p> <p>9 basket, in other words; and I really didn't care where</p> <p>10 it went. If it was -- whatever he did, I would hope</p> <p>11 that it was good for me.</p> <p>12 MR. FALLAS: Did Mr. Stein ever explain</p> <p>13 what you were going to be investing in at the time that</p> <p>14 you first started with this?</p> <p>15 THE WITNESS: Yeah, you know. He said,</p> <p>16 okay, Kenny, that's what we're going to do. I had some</p> <p>17 cash, I know --</p> <p>18 MR. FALLAS: No, no, no. What I'm saying</p> <p>19 is when -- when he said that, okay, we're going to put a</p> <p>20 portion in these RMK Funds --</p> <p>21 THE WITNESS: No, no.</p> <p>22 MR. FALLAS: -- did he ever tell you what</p> <p>23 the RMK Funds were?</p> <p>24 THE WITNESS: No, I don't recall that,</p> <p>25 let's say.</p>	<p style="text-align: right;">Page 1261</p> <p>1 MR. KERR: Anything further?</p> <p>2 MR. FALLAS: No.</p> <p>3 MR. MARTIN: No questions.</p> <p>4 MR. KERR: I have no questions.</p> <p>5 MR. WEISS: I just have a couple</p> <p>6 follow-ups, if I could.</p> <p>7 RECROSS-EXAMINATION</p> <p>8 Q. (BY MR. WEISS) First of all, in terms of what</p> <p>9 Mr. Stein told you about these investments in your</p> <p>10 discussions, it would be fair to say, sitting here today</p> <p>11 given all that you've gone through and the memory lapses</p> <p>12 that you've testified to, that Mr. Stein may have well</p> <p>13 explained the investments thoroughly to you and told you</p> <p>14 about the risks, you just don't recall?</p> <p>15 A. Man -- yeah, after what I went through --</p> <p>16 Q. After what you've been through, that's possible</p> <p>17 certainly, right?</p> <p>18 A. Believe me. It's impossible to try to remember</p> <p>19 that.</p> <p>20 Q. That's right. Okay. So, he may have told you</p> <p>21 about the risks and here we are today and you've gone</p> <p>22 through all of this and you don't recall. Fair enough?</p> <p>23 A. Correct.</p> <p>24 Q. All right. And in terms of making the</p> <p>25 decisions, okay, your accounts -- you ultimately had the</p>

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<p style="text-align: right;">Page 1294</p> <p>1 agree with this statement from your father.</p> <p>2 MR. WEISS: Put up Quote 10, please.</p> <p>3 Q. (BY MR. WEISS) The question was asked of him --</p> <p>4 Ms. Stein, that's the statement I'm asking you about.</p> <p>5 The question was asked of you -- of Mr. Stein, your</p> <p>6 father, and you passed on that information to the</p> <p>7 clients, referring to all the information that we've</p> <p>8 talked about. Everything that came out I believe we</p> <p>9 passed on. Okay. I mean, you told them the good, the</p> <p>10 bad and the ugly.</p> <p>11 And he said, "Right."</p> <p>12 It would be fair to say that you don't</p> <p>13 disagree that your father told you the good, the bad and</p> <p>14 the ugly about your investments at Morgan Keegan?</p> <p>15 A. Yes.</p> <p>16 Q. You think -- he didn't tell you the good, the</p> <p>17 bad --</p> <p>18 A. I'm sorry. When you do the double negatives --</p> <p>19 Q. You agree with his statement, don't you?</p> <p>20 A. I agree with his statement.</p> <p>21 Q. Ms. Stein, after those sales that we talked</p> <p>22 about earlier in 2006, where you made a profit, you</p> <p>23 actually came back and bought more of one of the funds</p> <p>24 when it dipped in value. Isn't that true?</p> <p>25 A. Whatever the statements reflect. I don't</p>	<p style="text-align: right;">Page 1296</p> <p>1 A. No.</p> <p>2 Q. And you don't disagree with the fact that you</p> <p>3 didn't turn over to us your 2004 tax return, as ordered</p> <p>4 by the Chairman?</p> <p>5 A. I -- if I did not turn it over, I'm sorry for</p> <p>6 the oversight.</p> <p>7 MR. WEISS: Those are all the questions I</p> <p>8 have at this time.</p> <p>9 MR. KERR: Anything further over here?</p> <p>10 MR. STAFFORD: No.</p> <p>11 MR. KERR: All right. Do you have any new</p> <p>12 question?</p> <p>13 MR. FALLAS: Briefly. Do -- do you know</p> <p>14 what a High Yield Bond Fund is?</p> <p>15 THE WITNESS: No, sir.</p> <p>16 MR. FALLAS: That's it.</p> <p>17 MR. KERR: Do you have anything else?</p> <p>18 MR. MARTIN: No questions.</p> <p>19 MR. KERR: I have no questions. Thank you</p> <p>20 so much. You can take your note.</p> <p>21 THE WITNESS: Okay. Sorry. Again, I</p> <p>22 didn't mean anything by it.</p> <p>23 MR. KERR: It's okay. No problem. Okay.</p> <p>24 Do we have time for another witness?</p> <p>25 MR. STAFFORD: I think so. Plaintiffs</p>
<p style="text-align: right;">Page 1295</p> <p>1 recall all the ups and downs.</p> <p>2 Q. Well, you don't disagree that you took</p> <p>3 advantage of a drop in price in the Multi-Sector Fund in</p> <p>4 2007 because it looked like a good buying opportunity at</p> <p>5 the time, right?</p> <p>6 A. Did it go up after that?</p> <p>7 Q. Do you recall -- do you know your purchase? Do</p> <p>8 you recall your purchase?</p> <p>9 MR. KERR: That's all his question is, if</p> <p>10 you remember doing that.</p> <p>11 A. I don't. But whatever is in there, it did.</p> <p>12 Q. (BY MR. WEISS) Okay. Now, a couple of other</p> <p>13 questions, Ms. Stein. Is there a reason why,</p> <p>14 notwithstanding the order of the Chairman in this case</p> <p>15 for the Claimants to turn over all their tax returns,</p> <p>16 that you did not turn over your 2004 tax return in this</p> <p>17 case? Did you file your tax return in 2004?</p> <p>18 A. I guess so. I don't know. I didn't know that</p> <p>19 I was missing anything. I honestly didn't. Nobody told</p> <p>20 me I was missing anything.</p> <p>21 MR. KERR: Well, his question was: Did</p> <p>22 you file a tax return in 2004.</p> <p>23 THE WITNESS: I guess I did.</p> <p>24 Q. (BY MR. WEISS) Any reason why you wouldn't</p> <p>25 have?</p>	<p style="text-align: right;">Page 1297</p> <p>1 next call Mr. Jose Collado.</p> <p>2 MR. KERR: Would you spell your name for</p> <p>3 the record, please, sir.</p> <p>4 THE WITNESS: C-O-L-L-A-D-O.</p> <p>5 MR. KERR: I'm sorry. Say that again.</p> <p>6 THE WITNESS: C-O-L-L-A-D-O.</p> <p>7 MR. KERR: All right. Thank you, sir.</p> <p>8 JOSE COLLADO,</p> <p>9 having been first duly sworn, testified as follows:</p> <p>10 DIRECT EXAMINATION</p> <p>11 MR. KERR: All right. Please proceed.</p> <p>12 Q. (BY MR. STAFFORD) Mr. Collado, could you please</p> <p>13 introduce yourself to the Panel, sir?</p> <p>14 A. My name is Jose Collado. I live in Miami,</p> <p>15 Florida. I am retired from a union office for the</p> <p>16 carpenter's union. I am here representing my wife,</p> <p>17 also, in investments.</p> <p>18 Q. And did your wife -- it's Adela, correct?</p> <p>19 A. Adela.</p> <p>20 Q. Did she give you authority to make investment</p> <p>21 decisions on her behalf?</p> <p>22 A. Yeah, we make it together.</p> <p>23 Q. And, sir, upon whom did you rely for advice</p> <p>24 when making the decision to invest and reinvest in four</p> <p>25 Morgan Keegan closed-end bond funds at issue?</p>

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<p style="text-align: right;">Page 1314</p> <p>1 A. Uh-huh.</p> <p>2 Q. Because some of them you had sold already at a</p> <p>3 profit we saw, right?</p> <p>4 A. Yes.</p> <p>5 Q. And you don't disagree, do you, Mr. Collado,</p> <p>6 that even with the small loss that you suffered in the</p> <p>7 funds at Morgan Keegan, that overall your account at</p> <p>8 Morgan Keegan was profitable, wasn't it?</p> <p>9 A. Up to a point, yes.</p> <p>10 MR. STAFFORD: Objection, that's</p> <p>11 irrelevant.</p> <p>12 MR. KERR: Overruled.</p> <p>13 Q. (BY MR. WEISS) And, Mr. Collado, when Mr. Stein</p> <p>14 was telling you about all the reasons why he wanted you</p> <p>15 to move with him to Morgan Keegan and why he was</p> <p>16 moving -- excuse me -- from Morgan Keegan to Raymond</p> <p>17 James, did he at any time tell you that he stood to gain</p> <p>18 about a million bucks in money from Raymond James for</p> <p>19 making the move?</p> <p>20 A. No, he didn't tell me that didn't concern me.</p> <p>21 What concerned me was the money I was losing with Morgan</p> <p>22 Keegan.</p> <p>23 Q. Okay.</p> <p>24 MR. WEISS: Those are all the questions I</p> <p>25 have at this time.</p>	<p style="text-align: right;">Page 1316</p> <p>1 documents you've seen that even with the funds at issue</p> <p>2 you made money, too?</p> <p>3 A. Well, I made money; but at the end I lost more</p> <p>4 money than I made.</p> <p>5 Q. Sure. But initially you made money and you</p> <p>6 were happy with it, right?</p> <p>7 A. Right. But I don't think that's the way I want</p> <p>8 to see it, you know. You asked me if I made money. I</p> <p>9 said yes. But at the end I lost more money than what I</p> <p>10 made.</p> <p>11 Q. And on the IRA, that's the account that --</p> <p>12 referring to your wife's IRA -- that's the account that</p> <p>13 Mr. Stein dealt directly with your wife on, right?</p> <p>14 A. Yeah.</p> <p>15 MR. WEISS: Okay.</p> <p>16 MR. KERR: All right. Do you have any</p> <p>17 questions?</p> <p>18 MR. FALLAS: Have you ever bought standard</p> <p>19 stocks other than this?</p> <p>20 THE WITNESS: No. No. Everything I have</p> <p>21 done has been, you know, through Russell Stein, you</p> <p>22 know. I don't have any stocks with any other --</p> <p>23 MR. FALLAS: No, but, I mean, have you</p> <p>24 ever bought a company, let's say, you know, Exxon,</p> <p>25 Coca-Cola, anything like that?</p>
<p style="text-align: right;">Page 1315</p> <p>1 MR. KERR: Do you have any follow-ups?</p> <p>2 MR. STAFFORD: Just a very quick couple,</p> <p>3 Mr. Chairman.</p> <p>4 REDIRECT EXAMINATION</p> <p>5 Q. (BY MR. STAFFORD) First of all, sir, you said</p> <p>6 that your wife had had some contact with Mr. Stein</p> <p>7 regarding investments?</p> <p>8 A. Very little.</p> <p>9 Q. And then after those discussions would y'all</p> <p>10 make a decision regarding the -- regarding your</p> <p>11 investments?</p> <p>12 A. Yeah. The IRA account that she has, I believe,</p> <p>13 is a very small IRA account.</p> <p>14 Q. And then, sir, the funds at issue here that you</p> <p>15 were invested in, did you lose money in those funds?</p> <p>16 A. Where? With Morgan Keegan?</p> <p>17 Q. Mr. Weiss asked you if you had made money</p> <p>18 overall. Did you lose money in the funds we're talking</p> <p>19 about?</p> <p>20 A. Oh, yeah, I lost money in the funds.</p> <p>21 MR. STAFFORD: That's it.</p> <p>22 MR. KERR: Anything further?</p> <p>23 MR. WEISS: I have two quick questions.</p> <p>24 RECROSS-EXAMINATION</p> <p>25 Q. (BY MR. WEISS) You don't disagree from the</p>	<p style="text-align: right;">Page 1317</p> <p>1 THE WITNESS: No.</p> <p>2 MR. FALLAS: A mutual fund?</p> <p>3 THE WITNESS: The mutual funds that I</p> <p>4 probably got was dealing with American Express or Morgan</p> <p>5 Keegan or Raymond James. It's part of the package, but</p> <p>6 no specific that I call anybody to tell buy this stock</p> <p>7 or these bonds or whatever.</p> <p>8 MR. FALLAS: Okay. In the other</p> <p>9 investments that you made, you know, financial, you</p> <p>10 know, with a financial firm, other than these funds,</p> <p>11 have you ever had one of those that -- that lost money?</p> <p>12 THE WITNESS: I have some of them that</p> <p>13 lost money, but you keep it there for a while and the</p> <p>14 money starts coming back. That was not the case, you</p> <p>15 know, that we have with Morgan Keegan.</p> <p>16 MR. FALLAS: Has there ever been one that</p> <p>17 did not come back?</p> <p>18 THE WITNESS: To be honest with you, I</p> <p>19 don't believe.</p> <p>20 MR. FALLAS: That's it.</p> <p>21 MR. KERR: Do you have any questions?</p> <p>22 MR. MARTIN: No questions.</p> <p>23 MR. WEISS: Can I just follow up just very</p> <p>24 quickly after Mr. Fallas?</p> <p>25 MR. KERR: All right.</p>

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<p style="text-align: right;">Page 1450</p> <p>1 your boss in making that statement?</p> <p>2 A. I would never set sit here in front of clients</p> <p>3 and say that they were not smart. No, I do believe that</p> <p>4 they are smart people, yes.</p> <p>5 Q. And they're all capable of making independent</p> <p>6 investment decisions, aren't they?</p> <p>7 A. Based on Russell's recommendations, that's</p> <p>8 correct.</p> <p>9 Q. But independent, they can evaluate the</p> <p>10 information and they can make a decision?</p> <p>11 A. I'm sure they can.</p> <p>12 Q. Whether to buy, sell or hold, right?</p> <p>13 A. I don't know. I'm assuming that, yes, they're</p> <p>14 smart enough to --</p> <p>15 Q. And you're capable of doing that as well,</p> <p>16 right?</p> <p>17 A. Absolutely.</p> <p>18 Q. You've been in the securities business for,</p> <p>19 what, 20 years?</p> <p>20 A. Absolutely.</p> <p>21 Q. And at the time that you bought your RMK Funds</p> <p>22 in 2004, you were aware that the Kelsoe Funds, the RMK</p> <p>23 Funds, including the open-end funds, had had substantial</p> <p>24 success, right?</p> <p>25 A. I cannot say anything about the open-end funds.</p>	<p style="text-align: right;">Page 1452</p> <p>1 MR. WEISS: I think those may be all the</p> <p>2 questions I have, Mr. Chairman. If I could have just a</p> <p>3 minute to ask my client.</p> <p>4 MR. KERR: Okay. We'll just sit tight.</p> <p>5 MR. WEISS: I think those are all the</p> <p>6 questions I have at this time.</p> <p>7 MR. KERR: All right. Thank you.</p> <p>8 Do you have any follow-ups?</p> <p>9 MR. STAFFORD: I do have a few,</p> <p>10 Mr. Chairman.</p> <p>11 REDIRECT EXAMINATION</p> <p>12 Q. (BY MR. STAFFORD) First of all, Ms. Gordon,</p> <p>13 could you explain to the Panel a little bit about the</p> <p>14 procedure for marketing an order solicited versus</p> <p>15 unsolicited? I think there may be some confusion about</p> <p>16 that.</p> <p>17 MR. KERR: I don't think there is with the</p> <p>18 Panel, but that's okay.</p> <p>19 A. No. I marked it as Russell told me to mark the</p> <p>20 trade.</p> <p>21 Q. (BY MR. STAFFORD) Okay. If an order was marked</p> <p>22 as unsolicited, would that mean that those clients had</p> <p>23 not talked to Russell previously and sought his advice?</p> <p>24 A. No. If a ticket was unsolicited, that means</p> <p>25 that they talked to Russell.</p>
<p style="text-align: right;">Page 1451</p> <p>1 I'm sorry. I just know that the closed-end funds, I did</p> <p>2 well or were doing well.</p> <p>3 Q. But at the time that you bought them, you were</p> <p>4 aware that Mr. Kelsoe had a -- a very, very positive</p> <p>5 track record in his investments?</p> <p>6 A. That's correct.</p> <p>7 Q. All right. And you were aware that Mr. Kelsoe</p> <p>8 had received awards for his success?</p> <p>9 A. I recall, yes, hearing that.</p> <p>10 Q. And you're aware that Morningstar had favorably</p> <p>11 rated all the funds, correct?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And all that was important in your</p> <p>14 investment decision, was it not?</p> <p>15 A. Yes.</p> <p>16 Q. All right.</p> <p>17 A. But -- but, again, I relied on Russell.</p> <p>18 Q. I understand what your response is.</p> <p>19 A. Okay.</p> <p>20 Q. But that was all important to you, wasn't it?</p> <p>21 A. Yes.</p> <p>22 Q. And the fact that this fund that you bought in</p> <p>23 the past had generated some 10 percent yield, that was</p> <p>24 important to you, too, right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 1453</p> <p>1 Q. And then called back later?</p> <p>2 A. Exactly.</p> <p>3 Q. Okay.</p> <p>4 MR. FALLAS: Excuse me. You say that if</p> <p>5 the ticket was marked unsolicited?</p> <p>6 THE WITNESS: No, I'm just saying, yeah,</p> <p>7 in that case, I just -- right. If -- I was -- I thought</p> <p>8 he asked me a general question, so I answered in</p> <p>9 generalities.</p> <p>10 MR. FALLAS: Okay. Well, let me ask you.</p> <p>11 THE WITNESS: Yes, sir.</p> <p>12 MR. FALLAS: I think I heard you say, if</p> <p>13 it was marked unsolicited, that means that they had</p> <p>14 talked to Russell. Is that what you said?</p> <p>15 THE WITNESS: Right. Usually -- customers</p> <p>16 would call -- or not customers -- clients would call in</p> <p>17 and talk to Russell, from what I recall, and they still</p> <p>18 do, and talk about what their needs are. He would ask</p> <p>19 them questions. They may say they need a certain amount</p> <p>20 of money monthly, et cetera; and then if we wanted to</p> <p>21 do -- or if they wanted to go ahead and do a trade, it</p> <p>22 was unsolicited when they called back, that's correct.</p> <p>23 MR. FALLAS: Continue.</p> <p>24 Q. (BY MR. STAFFORD) Could you actually turn to</p> <p>25 Exhibit 517, I believe.</p>

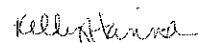
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<p style="text-align: right;">Page 1458</p> <p>1 negative statement?</p> <p>2 A. I would classify that as a positive.</p> <p>3 Q. And, again, this was a representative</p> <p>4 communication to the class that Russell had you send</p> <p>5 out.</p> <p>6 A. Yes.</p> <p>7 MR. STAFFORD: Nothing further.</p> <p>8 MR. KERR: Anything further?</p> <p>9 MR. WEISS: Yeah, I just have a couple of</p> <p>10 questions. I am 99.999 percent sure the Panel</p> <p>11 understands this, but just because the questions were</p> <p>12 there.</p> <p>13 RE-CROSS-EXAMINATION</p> <p>14 Q. (BY MR. WEISS) There's a distinction between an</p> <p>15 unsolicited order and a discretionary order, right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Now, discretion is where the broker just</p> <p>18 does whatever he wants, right?</p> <p>19 A. That's correct.</p> <p>20 Q. And there's typically written discretionary</p> <p>21 paperwork that allows for that, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. All right. And it would be fair to say that</p> <p>24 with respect to the Claimants in this case, none of them</p> <p>25 had discretionary relationships with Mr. Stein, right?</p>	<p style="text-align: right;">Page 1460</p> <p>1 If you -- if you had known that this</p> <p>2 investment, the RMK Funds, were risky or speculative,</p> <p>3 would that have changed your decision to invest?</p> <p>4 THE WITNESS: If it had been disclosed</p> <p>5 that they were risky and I knew it -- if I had been</p> <p>6 advised that it was risky, you're right, I would not</p> <p>7 have invested in them. I just -- I --</p> <p>8 MR. FALLAS: Would your answer be the same</p> <p>9 as to continuing to hold or to reinvest?</p> <p>10 THE WITNESS: I reinvested based on</p> <p>11 Russell's recommendation, and I held based on his</p> <p>12 recommendation.</p> <p>13 MR. FALLAS: What I'm saying, though, is,</p> <p>14 the answer to the question of, if you had known it was</p> <p>15 risky, would -- would that -- would you give a similar</p> <p>16 answer to the question of -- would that also affect your</p> <p>17 decision to -- to hold it or to reinvest, in addition to</p> <p>18 investing to begin with?</p> <p>19 THE WITNESS: Honestly, I only talked to</p> <p>20 Russell about it; and if he said hold, I did. If he</p> <p>21 said reinvest, I did. I just -- I didn't -- I don't</p> <p>22 know what else to say. I mean, if that's -- for me,</p> <p>23 working in -- in the office and hearing Russell on the</p> <p>24 phone and knowing he was calling and knowing that there</p> <p>25 were meetings -- and I'm thinking -- I'm thinking back</p>
<p style="text-align: right;">Page 1459</p> <p>1 A. That's correct.</p> <p>2 Q. And it would be fair to say that these trades</p> <p>3 that we discussed early, those are marked not discretion</p> <p>4 versus nondiscretion, but they're marked unsolicited,</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And an unsolicited trade is where it is</p> <p>8 the client's idea to do the trade after a consultation,</p> <p>9 right?</p> <p>10 A. That's correct.</p> <p>11 Q. All right. Now, with respect to this document,</p> <p>12 568, because you've pointed out both good, bad and ugly,</p> <p>13 you would characterize this as overall balanced,</p> <p>14 wouldn't you?</p> <p>15 MR. FALLAS: What was that last word?</p> <p>16 "Balanced"?</p> <p>17 MR. WEISS: Balanced, meaning a balanced</p> <p>18 presentation.</p> <p>19 MR. KERR: Yeah, good and bad.</p> <p>20 MR. WEISS: Yeah.</p> <p>21 A. It -- and I'm just reading it really quickly.</p> <p>22 It sounds more positive to me.</p> <p>23 Q. (BY MR. WEISS) Okay. Fair enough. Thank you.</p> <p>24 MR. KERR: All right. Anything further?</p> <p>25 MR. FALLAS: I have one question.</p>	<p style="text-align: right;">Page 1461</p> <p>1 to when these funds were first marketed. So, see, I'm</p> <p>2 sorry. That's why I'm confused.</p> <p>3 MR. FALLAS: All right. This may be the</p> <p>4 same question -- I'm just going to ask it one more time</p> <p>5 a different way, and then that's pretty much it.</p> <p>6 THE WITNESS: Okay.</p> <p>7 MR. FALLAS: If -- if Russell had</p> <p>8 recommended -- had recommended to hold --</p> <p>9 THE WITNESS: Right.</p> <p>10 MR. FALLAS: -- but you also knew that it</p> <p>11 was classified as risky or speculative, would you have</p> <p>12 agreed with Russell or would you have had second</p> <p>13 thoughts?</p> <p>14 THE WITNESS: If I had known?</p> <p>15 MR. FALLAS: I'll make it a little bit</p> <p>16 simpler.</p> <p>17 THE WITNESS: No; I --</p> <p>18 MR. FALLAS: Wait, wait, wait.</p> <p>19 MR. KERR: She's answered the question.</p> <p>20 What was your answer? You were about to say --</p> <p>21 MR. FALLAS: Well, I wanted to scratch</p> <p>22 that because it was a little confusing.</p> <p>23 Imagine the idea, my trusted advisor is</p> <p>24 suggesting that I hold a -- an investment that I've been</p> <p>25 told is speculative.</p>

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<p style="text-align: right;">Page 1462</p> <p>1 THE WITNESS: I honestly don't recall</p> <p>2 being told it was speculative.</p> <p>3 MR. FALLAS: No, I understand. I'm saying</p> <p>4 hypothetically.</p> <p>5 THE WITNESS: Oh, gosh.</p> <p>6 MR. FALLAS: If you've been told that the</p> <p>7 investment is speculative, but your trusted advisor is</p> <p>8 telling you to hold it, you know, would you tend to --</p> <p>9 would that sway your opinion?</p> <p>10 THE WITNESS: If I knew that something was</p> <p>11 risky? See, my -- I don't think Russell would advise me</p> <p>12 to get into anything risky. So, that's -- that's where</p> <p>13 my confusion is. I don't -- if you're asking me if I</p> <p>14 knew that something was risky, would I -- yes, if I know</p> <p>15 something is risky. But I trust that Russell did not</p> <p>16 believe that this was risky. I -- he did his homework,</p> <p>17 as far as I could see. So --</p> <p>18 MR. FALLAS: Okay.</p> <p>19 MR. KERR: You trusted Russell.</p> <p>20 THE WITNESS: So, I apologize if that's</p> <p>21 not very clear, but --</p> <p>22 MR. WEISS: Mr. Chairman, can I follow up</p> <p>23 on that just very, very, very quickly?</p> <p>24 MR. KERR: Okay.</p> <p>25</p>	<p style="text-align: right;">Page 1464</p> <p>1 investment in the fund's common shares is subject to</p> <p>2 investment risk, including the possible loss of the</p> <p>3 entire investment, that's the kind of risk you're</p> <p>4 talking about, that had that been disclosed to you, you</p> <p>5 wouldn't have bought, right?</p> <p>6 A. But I was trying to answer his question as</p> <p>7 to -- and it was a hypothetical question. So, I</p> <p>8 don't --</p> <p>9 MR. KERR: But now let's answer his</p> <p>10 question.</p> <p>11 A. Okay. So, if I had known --</p> <p>12 Q. (BY MR. WEISS) If it had been disclosed to</p> <p>13 you -- if Morgan Keegan had given you a piece of paper</p> <p>14 on this fund and in the piece of paper it said, right</p> <p>15 there, under investment risk "an investment in the</p> <p>16 fund's common shares is subject to investment risk,</p> <p>17 including the possible loss of the entire principal that</p> <p>18 a shareholder invests --</p> <p>19 A. If I had read that --</p> <p>20 Q. You wouldn't have bought?</p> <p>21 A. Well, if Russell told me I could get it,</p> <p>22 then -- that I should buy it, that it was okay to invest</p> <p>23 in it based on his knowledge, I -- but those kinds of</p> <p>24 things are usually put in everything.</p> <p>25 Q. Well, let me -- let me try something else.</p>
<p style="text-align: right;">Page 1463</p> <p>1 CROSS-EXAMINATION (CONTINUED)</p> <p>2 Q. (BY MR. WEISS) Ms. Gordon, when you said that</p> <p>3 you wouldn't have invested in it had it been disclosed</p> <p>4 to you that it was risky, I want to make sure that I</p> <p>5 understand what kind of risk you're talking about that</p> <p>6 could have been disclosed.</p> <p>7 MR. KERR: It was a hypothetical question.</p> <p>8 MR. WEISS: I understand it was a</p> <p>9 hypothetical question.</p> <p>10 Q. (BY MR. WEISS) Hypothetically, if it had been</p> <p>11 disclosed to you that an investment in the fund's common</p> <p>12 shares is subject to investment risk, including the</p> <p>13 possible loss of the entire principal that the</p> <p>14 shareholder invests, isn't that the kind of risk that</p> <p>15 you're talking about, that had that been disclosed, you</p> <p>16 wouldn't have bought it in the first place?</p> <p>17 A. I would not knowingly invest in something that</p> <p>18 was risky, but I believe Russell would not let me invest</p> <p>19 in anything risky.</p> <p>20 Q. That's all I'm asking. I'm asking in response</p> <p>21 to your testimony that you said that had it been</p> <p>22 disclosed to you that this investment had risk, that you</p> <p>23 wouldn't have invested. And my question to you is: Had</p> <p>24 it been -- in terms of trying to figure out what you</p> <p>25 mean by risk -- had it been disclosed to you that an</p>	<p style="text-align: right;">Page 1465</p> <p>1 What if it had been disclosed to you in writing that the</p> <p>2 fund will invest a significant portion of its assets in</p> <p>3 below-investment-grade securities, which are considered</p> <p>4 predominantly speculative. Had that been disclosed to</p> <p>5 you in writing, that's the kind of thing you're talking</p> <p>6 about, had you known that in writing, you wouldn't have</p> <p>7 bought the thing, right?</p> <p>8 A. If I asked Russell -- I asked Russell what I</p> <p>9 should put my money in, and that's what I did.</p> <p>10 Q. I understand that. Could you answer my</p> <p>11 question, please?</p> <p>12 A. And if I had read that, if he recommended it, I</p> <p>13 still would have done it.</p> <p>14 Q. That's not my question.</p> <p>15 A. Because --</p> <p>16 Q. If it had been disclosed to you in writing,</p> <p>17 would you have -- in terms of following up on the</p> <p>18 question --</p> <p>19 A. If Russell --</p> <p>20 MR. STAFFORD: She's answered the</p> <p>21 question.</p> <p>22 MR. KERR: She did answer that question.</p> <p>23 MR. WEISS: Okay.</p> <p>24 A. Yeah, even if I read it, I don't believe</p> <p>25 Russell would have put me in any -- or told me to invest</p>

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1 MS. BLACKWELL: I think two total.	1 getting here. So, make sure you have your passes; or
2 MR. DOBROWSKI: How long?	2 they may not let you pass.
3 MS. BLACKWELL: Two total.	3 MR. KERR: We're off the record.
4 MR. DOBROWSKI: Two hours?	4 (Proceedings recessed at 4:29 p.m.)
5 MS. BLACKWELL: At the most.	5
6 MR. KEMP: How long are you anticipating	6
7 for direct?	7
8 MS. BLACKWELL: Probably an hour, an hour	8
9 and 15 minutes. Yeah, probably an hour.	9
10 MR. KERR: Okay. So, that's four hours.	10
11 And then something like two hours for closing argument.	11
12 That's six hours.	12
13 MR. DOBROWSKI: I heard four-and-a-half.	13
14 Two-and-a-half for Mr. Ekdahl, two for the --	14
15 MR. WEISS: Scales isn't going to take	15
16 that long. He will be less would be my expectation.	16
17 MR. KERR: Okay. Well, where I'm headed	17
18 with that is to see -- now, we want to finish tomorrow.	18
19 We are going to finish tomorrow. Should we come at	19
20 9:00 o'clock, then? Or could we start later? With	20
21 people traveling, you might want to start at 9:00. I	21
22 don't know.	22
23 MR. DOBROWSKI: Are we going to stop now	23
24 or can we hear from -- I mean, I don't mind going until	24
25 6:00, if that's what the Panel wants. If the Panel	25
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1 would prefer, though, to stop now, that's fine, too.	1 STATE OF TEXAS
2 It's your decision.	2 COUNTY OF HARRIS
3 MR. CARLIN: I actually think we might	3
4 benefit from starting -- because based on the way that	4 REPORTER'S CERTIFICATE
5 the testimony has gone today, I'm going to try to knock	5 ARBITRATION HEARING
6 out some of what Mr. Ekdahl has to talk about --	6 January 29, 2011
7 MR. KERR: Well, I think that's just fine.	7
8 I guess I was making an assumption --	8 I, the undersigned Certified Shorthand Reporter in
9 MR. CARLIN: -- to try to make it shorter.	9 and for the State of Texas, certify that the facts
10 Mr. Chair, I don't think there's any doubt we'll finish	10 stated in the foregoing pages are true and correct.
11 tomorrow. I think -- my preference would be, let's just	11 I further certify that I am neither attorney or
12 start at 9:00 and get it done.	12 counsel for, related to, nor employed by any parties to
13 MR. KERR: Start at 9:00. Okay. All	13 the action in which this testimony is taken and,
14 right.	14 further, that I am not a relative or employee of any
15 MR. DOBROWSKI: Whatever the Panel wants	15 counsel employed by the parties hereto or financially
16 is fine with us.	16 interested in the action.
17 MR. CARLIN: And if we finish earlier,	17 SUBSCRIBED AND SWORN TO under my hand and seal of
18 then everybody gets to go home earlier.	18 office on this the _____ day of _____,
19 MR. KERR: Okay. We'll start at 9:00 in	19 _____:  Digitally signed by Kelly Hanna
20 the morning, then. Thank you very much.	20 Date: 2011.02.03 09:34:37 -0800
21 MR. CARLIN: And we do think that because	21 Reason: I am the author of this document
22 of the full Marathon that's going on tomorrow --	22 Location: Houston, TX
23 MS. BLACKWELL: My understanding, yes,	23 Kelly Hanna, CSR, RPR, CRR, CMRS
24 that security is going to be -- and the Marathon will	24 Texas CSR 1654
25 probably be coming here closer to the time that we are	25 Expiration: 12/31/2011
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17 ARBITRATION PROCEEDINGS was taken in the	22
18 above-styled and numbered cause on the 30th day of	23
19 January, 2011, from 9:01 a.m. to 4:55 p.m., before Kelly	24
20 Hanna, Certified Shorthand Reporter in and for the State	25
21 of Texas, reported by computerized stenotype machine at	
22 the offices of Greenberg Traurig, 1000 Louisiana, Suite	
23 1700, Houston, Texas, pursuant to the Federal Rules of	
24 Civil Procedure and the provisions stated on the record	
25 or attached hereto.	
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1 APPEARANCES	1 MR. KERR: All right. On the record. The
2	2 Respondents are up today. Would you call your first
3 FOR CLAIMANTS:	3 witness, please, sir.
4 Mr. Paul J. Dobrowski	4 MR. CARLIN: Yes, sir, Mr. Chair.
Mr. Bruce Kemp	5 Respondents call Mr. Kjell Ekdahl.
5 Mr. Cody Stafford	6 MR. KERR: All right. I think I've got
Dobrowski, LLP	7 the spelling here.
6 4602 Washington Avenue, Suite 300	8 MR. CARLIN: It should be on the front of
Houston, Texas 77007	9 the slide deck.
7 Telephone: 713.659.2900	10 MR. KERR: Mr. Ekdahl, would you state
Fax: 713.659.2908	11 your name for the record?
8 E-mail: pdobrowski@doblaw.com	12 THE WITNESS: Yes, sir. My name is Kjell
9 FOR RESPONDENTS:	13 Ekdahl.
10 Mr. Terry Weiss	14 KJEL EKDAHL,
Mr. Steve Carlin	15 having been first duly sworn, testified as follows:
11 Ms. Penelope Brobst Blackwell	16 DIRECT EXAMINATION
Greenberg Traurig	17 MR. KERR: All right. Thank you.
12 The Forum	18 Please proceed, Mr. Carlin.
3290 Northside Parkway	19 MR. CARLIN: Thank you, Mr. Chair.
13 Atlanta, Georgia 30327	20 Q. (BY MR. CARLIN) Mr. Ekdahl, I would like to
Telephone: 678.553.2100	21 start, if you could please describe for the Panel, tell
14 Fax: 678.553.2212	22 them a little bit about yourself.
E-mail: weissstr@gllaw.com	23 A. Yes. Starting from the beginning, I actually
15 ALSO PRESENT:	24 grew up in Sweden. I went to school there, and I
16 Mr. Maurice Fallas, Arbitrator	25 started my career in Sweden. I graduated from Lund
17 Mr. Raymond C. Kerr, Arbitrator	
Mr. Thomas A. Martin, Arbitrator	
18 Mr. Tom Barnett, Morgan Keegan	
Mr. Steve Scales, Expert	
19 Mr. Kjell Ekdahl, Expert	
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<p style="text-align: right;">Page 1658</p> <p>1 we could turn to 65 of Dr. McCann's report -- slide. 2 And 65, you will recall when Dr. McCann was here, he 3 noted that this change had been made to the risk 4 disclosures in the open-ended funds by Morgan Keegan but 5 not to any of the other closed-end funds until March of 6 2008, and you're familiar with that, right? 7 A. I'm familiar with it. 8 Q. Okay. And that doesn't change your opinion, 9 right? 10 A. No. 11 Q. Okay. 12 MR. DOBROWSKI: Pass the witness. Thank 13 you. 14 MR. KERR: Anything further? 15 MR. CARLIN: Just one or two questions. 16 FURTHER REDIRECT EXAMINATION 17 Q. (BY MR. CARLIN) To your knowledge, sir, did the 18 Federal Reserve ever do a pricing analysis of the 19 history of the pricing of the securities? 20 A. Not to my knowledge. 21 Q. Did the SEC? 22 A. No. 23 Q. Does any of this -- you've seen all of those 24 documents before, correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 1660</p> <p>1 Q. Mr. Carlin asking the questions of Mr. Stein. 2 Remember, you testified about Mr. Stein? 3 A. That's right. 4 Q. And Mr. Stein is asked the question: In fact, 5 sir, you understood they were going pretty far down the 6 credit stack to generate the yields that they were 7 generating, correct? 8 Answer: We had that discussion and to 9 reference it back to, like, a barrel of oil, you have 10 light sweet crude at the top of the barrel, you have the 11 asbestos at the bottom of the barrel and we thought that 12 we were getting about the middle of the barrel, not the 13 bottom. 14 Does that refresh your recollection that, 15 in fact, Mr. Stein's testimony was that he understood 16 they weren't getting the lowest of the tranches, but 17 about the middle stack? 18 A. They weren't getting the lowest tranches. 19 There were some lowest tranches. There were some 20 highest tranches. There were some in between. My 21 testimony was the bottom 25, 30 percent, that's where 22 they were. 23 MR. DOBROWSKI: Okay. Thank you. Pass 24 the witness. 25</p>
<p style="text-align: right;">Page 1659</p> <p>1 Q. You did an analysis of the pricing and sale of 2 these securities, correct? 3 A. Yes. 4 Q. Dr. McCann did not, did he? 5 A. He did not. 6 MR. CARLIN: Nothing further. 7 FURTHER RECROSS-EXAMINATION 8 Q. (BY MR. DOBROWSKI) I had forgot one question 9 before I let you go; and I apologize, Mr. Ekdahl. 10 You've testified earlier about your belief as to what 11 Mr. Stein testified to. 12 MR. DOBROWSKI: May I approach, Mr. Chair, 13 very briefly? 14 MR. KERR: Yes. 15 Q. (BY MR. DOBROWSKI) On Page 961 of the 16 arbitration testimony on October 15, and it's up on the 17 board, Line 17 -- 18 MR. WEISS: I'm sorry. Which day was that 19 of the hearing? 20 MR. DOBROWSKI: Day 4. 21 Q. (BY MR. DOBROWSKI) 961, Line 17, the question 22 was asked: In fact, sir -- and this is to Mr. Stein. 23 A. Let me just reorient myself. 24 Q. Yes, sir. 25 A. This is whom again?</p>	<p style="text-align: right;">Page 1661</p> <p>1 FURTHER REDIRECT EXAMINATION 2 Q. (BY MR. CARLIN) Okay. Let's look at the three 3 lines that weren't highlighted right after that. Okay. 4 Line 25. We'll take a look at the marketing pieces, but 5 you understood that to get these yields these funds were 6 investing in lower tranches, correct? 7 That's correct. 8 Did I read that correctly, Mr. Ekdahl? 9 A. Yes. 10 MR. CARLIN: Thank you. 11 MR. KERR: All right. So, you're done. 12 MR. DOBROWSKI: I'm done. 13 MR. KERR: Very good. 14 Does the Panel have any questions of this 15 witness? 16 MR. FALLAS: I have one. 17 Regarding the issue, the question already 18 came up about if other prospectuses, you know, of 19 similar bond funds ever talked about where in the stack 20 the -- the tranche was located, I believe you said that 21 it's not -- it's not done that you're aware of in any 22 prospectus. 23 THE WITNESS: I have not seen it, and I 24 have reviewed almost all -- all the high-yield bond 25 prospectuses.</p>

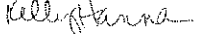
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<p>1 MR. FALLAS: And that's the same -- they</p> <p>2 simply don't talk about it whether they happen to have</p> <p>3 the highest rating or the lowest rating.</p> <p>4 THE WITNESS: Typically what you see is a</p> <p>5 discussion on, say, asset-backed securities, and it may</p> <p>6 talk about tranches, some may and some may not, but it's</p> <p>7 a pretty big-picture descriptions.</p> <p>8 MR. FALLAS: What I'm saying, like, even</p> <p>9 if you had a fund that, you know, had -- you know, they</p> <p>10 happened to be, you know, the highest quality -- they --</p> <p>11 they tended to concentrate their selections in the</p> <p>12 highest levels of the -- of the structure, they still</p> <p>13 don't -- they don't parse out -- when they list, you</p> <p>14 know, you know, 3AA, S2A --</p> <p>15 THE WITNESS: I see what you're saying.</p> <p>16 MR. FALLAS: -- in other words, you said</p> <p>17 basically they don't talk about the -- if -- where it</p> <p>18 is, if it's low grade, but if they happen to have some</p> <p>19 of the best, do they ever say, you know, this is the</p> <p>20 highest?</p> <p>21 THE WITNESS: No. I'm sorry. I</p> <p>22 misunderstood. No, they do not. That's where you go to</p> <p>23 the annual reports and the semi-annual reports to get a</p> <p>24 description of what's in the fund. In the prospectus,</p> <p>25 no, they do not, whether it's highest or lowest.</p>	<p>1 something to find out exactly where it's lined up.</p> <p>2 THE WITNESS: Yes, sir. Or to the</p> <p>3 offering documents. But you would have to go outside of</p> <p>4 the reports.</p> <p>5 MR. FALLAS: Okay.</p> <p>6 MR. KERR: Do you have any questions?</p> <p>7 MR. MARTIN: No questions.</p> <p>8 MR. KERR: I have no questions for you,</p> <p>9 sir. Thank you very much for your testimony.</p> <p>10 THE WITNESS: Thank you.</p> <p>11 MR. KERR: You're excused.</p> <p>12 THE WITNESS: Thank you, sir.</p> <p>13 MR. KERR: Now, Mr. Carlin, the Panel just</p> <p>14 has a question. Earlier, for Mr. McCann, we received</p> <p>15 this very detailed report which analyzes the events,</p> <p>16 whatever, with respect to the Claimants. Today we</p> <p>17 received another very good report that takes the same</p> <p>18 events and casts a different light on them, not to be</p> <p>19 unexpected. So, we've heard a lot from both experts</p> <p>20 about this case. The Panel is curious about the expert</p> <p>21 you propose to call, what will he add to the mix of</p> <p>22 information to help us make a more informed judgment?</p> <p>23 MR. CARLIN: Sure. Mr. Scales -- and</p> <p>24 Ms. Blackwell can fill it in if I miss anything --</p> <p>25 Mr. Scales is going to testify about the individual</p>
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<p>1 MR. FALLAS: I'm sorry. I misspoke. I</p> <p>2 meant the annual report or the quarterly report where it</p> <p>3 lists the holdings.</p> <p>4 THE WITNESS: Okay. So, not the</p> <p>5 prospectus but the annual reports?</p> <p>6 MR. FALLAS: Right. And let me take it</p> <p>7 back -- it's basically the -- where -- they showed one</p> <p>8 on the screen that was basically a particular CDO or</p> <p>9 something and it doesn't say anywhere on there you would</p> <p>10 have to go to the Bloomberg to find out where that fit</p> <p>11 in the stack. And, so, my question is, that description</p> <p>12 is not -- I'm asking you if that description is ever</p> <p>13 included, a detail of where it is in the sack, even if</p> <p>14 it's of the highest quality.</p> <p>15 THE WITNESS: That's right. So, the</p> <p>16 answer is, no, I've never seen it being described this</p> <p>17 is No. 1 of ten levels or some kind of description like</p> <p>18 that. We are only listing, here are all the top</p> <p>19 tranches, here are the third tranches and here are all</p> <p>20 the bottom. Never. I have never seen anything like</p> <p>21 that. It's usually by credit quality or investment</p> <p>22 grade, below investment grade or by sector.</p> <p>23 MR. FALLAS: Okay. So, for all of them,</p> <p>24 regardless of whether they're the highest or the lowest,</p> <p>25 you would still basically have to go to a Bloomberg or</p>	<p>1 claimants and about their losses. Mr. Ekdahl did not go</p> <p>2 into Claimant by Claimant damages, losses, et cetera.</p> <p>3 He's also got some other topics that he's going to talk</p> <p>4 about, but it's much more focused on the individual</p> <p>5 Claimants.</p> <p>6 MR. WEISS: And it is focused on the</p> <p>7 broker and the communications from Morgan Keegan to the</p> <p>8 broker to the Claimants.</p> <p>9 MR. KEMP: If I may, Mr. Chairman, and</p> <p>10 perhaps this is a little premature because I don't</p> <p>11 really know what they're going to try and elicit from</p> <p>12 that individual, the only thing they produced to us</p> <p>13 related to his damage calculations, so to the extent he</p> <p>14 wants to do that, I think that's appropriate. Anything</p> <p>15 else has not been properly disclosed, either in the 20</p> <p>16 day or in response to discovery requests.</p> <p>17 MR. WEISS: I don't know what you mean by</p> <p>18 "properly disclosed."</p> <p>19 MS. BLACKWELL: I'm prepared to answer</p> <p>20 this question.</p> <p>21 MR. WEISS: Okay. Go ahead.</p> <p>22 MS. BLACKWELL: First of all, you did not</p> <p>23 make a discovery request in this case to have a</p> <p>24 disclosure on the topics of Mr. Scales' testimony. All</p> <p>25 you -- all we have to do in this case is comply with the</p>

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<p>1 MR. CARLIN: That's the part that shocks</p> <p>2 me.</p> <p>3 MR. DOBROWSKI: Agreed.</p> <p>4 MR. KERR: Okay. Do the parties have any</p> <p>5 other issues or objections you would like to raise that</p> <p>6 you have not previously raised?</p> <p>7 MR. DOBROWSKI: Claimants do not.</p> <p>8 MR. CARLIN: Respondents do not.</p> <p>9 MR. KERR: All right. Thank you. The</p> <p>10 decision will be forwarded to the parties and/or</p> <p>11 counsel. In order to expedite the delivery of the</p> <p>12 Panel's decision to the parties, may either execute a</p> <p>13 handwritten copy of the award or each arbitrator may</p> <p>14 execute a counterpart copy.</p> <p>15 There is also an issue of party</p> <p>16 evaluations. As I mentioned at the beginning of the</p> <p>17 case, I asked that each party or representative complete</p> <p>18 an evaluation of this arbitration. Your participation,</p> <p>19 while it's strictly voluntary, greatly assists -- that's</p> <p>20 in this evaluation process -- greatly assists FINRA</p> <p>21 Dispute Resolution's ongoing effort to improve the</p> <p>22 arbitration process. You can find the evaluation form</p> <p>23 at www.FINRA.org/reevaluation. If you do not have</p> <p>24 computer access -- well, I can skip that. We're</p> <p>25 surrounded by computers.</p>	<p>1 carefully to everything you have had to say and your</p> <p>2 exhibits. We're going to work very hard to come up with</p> <p>3 what we collectively believe is the right resolution.</p> <p>4 And if either one of my colleagues wants to speak up,</p> <p>5 please do.</p> <p>6 MR. MARTIN: From my side, it was a good</p> <p>7 job by both sides. The parties were extremely well</p> <p>8 represented. The arguments of counsel were very well</p> <p>9 taken. And you've given us a lot to be thinking about.</p> <p>10 Thank you both very, very much.</p> <p>11 MR. FALLAS: I just have one question for</p> <p>12 Mr. Carlin.</p> <p>13 MR. KERR: A question?</p> <p>14 MR. FALLAS: Yes. Just a quick question</p> <p>15 on one of the things.</p> <p>16 MR. KERR: Well, I don't think it's</p> <p>17 appropriate if you're going to ask him about his</p> <p>18 argument or some point --</p> <p>19 MR. FALLAS: No, I just want a definition.</p> <p>20 MR. KERR: A definition?</p> <p>21 MR. FALLAS: Yes.</p> <p>22 MR. KERR: Tell me what you want a</p> <p>23 definition of.</p> <p>24 Okay. So, we can go off the record now.</p> <p>25 The hearing is closed. And -- but we need to talk about</p>
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<p>1 FINRA is not responsible for secure</p> <p>2 disposal of any documents left with the Panel or the</p> <p>3 parties following the proceeding. This hearing facility</p> <p>4 will dispose of all remaining materials in its usual</p> <p>5 manner. If a party wishes to retain secure control of</p> <p>6 the materials, they must take them when leaving. The</p> <p>7 record of this proceeding -- and this record is a term</p> <p>8 of art in the arbitration practice as you-all know --</p> <p>9 the record of this proceeding will remain open until the</p> <p>10 Panel arrives at a decision or the Panel determines that</p> <p>11 it is closed. No party will contact any member of this</p> <p>12 arbitration Panel directly. All communications are to</p> <p>13 be directed to the staff person assigned to this case.</p> <p>14 And additionally, what I would like to</p> <p>15 say -- and I'm speaking for me, not on behalf of the</p> <p>16 Panel necessarily. They can certainly have their views,</p> <p>17 too, but, again, I want to say that I consider this a</p> <p>18 very well-trying case. I think these are probably two of</p> <p>19 the finest final argument summations and materials I've</p> <p>20 ever seen. And I want to compliment both parties on</p> <p>21 that. Your presentations were very professional. And</p> <p>22 as I said earlier, we certainly disagreed from time to</p> <p>23 time, but you were able basically to do that without</p> <p>24 being disagreeable, which is the professional way to do</p> <p>25 it; and we appreciate it. And we have listened</p>	<p>1 some logistics.</p> <p>2 (Proceedings concluded at 4:55 p.m.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1	STATE OF TEXAS
2	COUNTY OF HARRIS
3	
4	REPORTER'S CERTIFICATE
5	ARBITRATION HEARING
6	January 30, 2011
7	
8	I, the undersigned Certified Shorthand Reporter in
9	and for the State of Texas, certify that the facts
10	stated in the foregoing pages are true and correct.
11	I further certify that I am neither attorney or
12	counsel for, related to, nor employed by any parties to
13	the action in which this testimony is taken and,
14	further, that I am not a relative or employee of any
15	counsel employed by the parties hereto or financially
16	interested in the action.
17	SUBSCRIBED AND SWORN TO under my hand and seal of
18	office on this the 7th day of February, 2011.
19	 Digitally signed by Kelly Hanna Date: 2011.02.07 11:43:18 -06:00 Reason: I am the author of this document Location: Houston, TX
20	Kelly Hanna, CSR, RPR, CRR, CMRS
21	Texas CSR 1654
22	Expiration: 12/31/2011
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